

**MARKUP OF H.R. 811; CONSIDERATION OF FOUR  
ELECTION CONTESTS; AND CONSIDERATION OF  
A COMMITTEE FRANKING ALLOCATION  
RESOLUTION**

---

---

**MEETING**  
BEFORE THE  
**COMMITTEE ON HOUSE  
ADMINISTRATION**  
**HOUSE OF REPRESENTATIVES**  
ONE HUNDRED TENTH CONGRESS  
FIRST SESSION

MEETING HELD IN WASHINGTON, DC, MAY 8, 2007

Printed for the use of the Committee on House Administration



Available on the Internet:  
<http://www.gpoaccess.gov/congress/house/administration/index.html>

U.S. GOVERNMENT PRINTING OFFICE

36-562

WASHINGTON : 2007

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON HOUSE ADMINISTRATION

ROBERT A. BRADY, Pennsylvania, *Chairman*

ZOE LOFGREN, California

MICHAEL E. CAPUANO, Massachusetts

CHARLES A. GONZALEZ, Texas

SUSAN A. DAVIS, California

ARTUR DAVIS, Alabama

VERNON J. EHLERS, Michigan,

*Ranking Minority Member*

DANIEL E. LUNGREN, California

KEVIN MCCARTHY, California

S. ELIZABETH BIRNBAUM, *Staff Director*

WILL PLASTER, *Minority Staff Director*

**CONSIDERATION OF H.R. 811; CONSIDERATION OF FOUR ELECTION CONTESTS; AND CONSIDERATION OF A COMMITTEE FRANKING ALLOCATION RESOLUTION**

**TUESDAY, MAY 8, 2007**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOUSE ADMINISTRATION,  
*Washington, DC.*

The committee met, pursuant to call, at 1:05 p.m., in room 1310, Longworth House Office, Hon. Robert A. Brady (chairman of the committee) presiding.

Present: Representatives Brady, Lofgren, Capuano, Gonzalez, Davis of California, Davis of Alabama, Ehlers, Lungren, and McCarthy.

Staff Present: Liz Birnbaum, Staff Director; Charles Howell, Chief Counsel; Matt Pinkus, Professional Staff/Parliamentarian; Tom Hicks, Election Counsel; Janelle Hu, Election Counsel; Kristin McCowan, Chief Legislative Clerk; Robert Henline, Staff Assistant; Fred Hay, Minority General Counsel; Gineen Beach, Minority Counsel; and Peter Sloan, Minority Professional Staff.

The CHAIRMAN. I would like to call the meeting to order.

Good afternoon everyone. The first order of business today will be the consideration of H.R. 811. On May 2nd, 2007, I discharged the Subcommittee on Elections from further consideration of that bill pursuant to committee rule 17.

This is a bill that was very important to Chairwoman Millender-McDonald, as she cared deeply that every citizen of our great Nation should be able to vote, and that every vote should be counted. I now recognize myself for an opening statement.

Today the Committee will mark up H.R. 811, the Voter Confidence and Increased Accessibility Act of 2007, which amends the Help America Vote Act of 2002, or HAVA. The bill will require electronic voting machines to produce a voter verified paper ballot for every voter. This paper ballot would become the ballot of record in the event of a recount or audit. The bill would also mandate routine random audits as prescribed by the National Institute of Standards and Technology, and preserve and enhance the accountability requirements of HAVA. Other requirements are also added for voting systems.

The Lofgren substitute to be offered today addresses some of the concerns that have been raised by voting officials, technology companies and other advocates who have previously expressed concerns about this bill. I hope that by addressing their concerns

through this substitute, we can persuade these interests to support this vital piece of legislation.

One of the biggest changes from the original bill is that this substitute increases the authorized appropriations from \$300 million to \$1 billion to help States pay for the implementation of the new requirements.

I would now like to recognize Ranking Member Mr. Ehlers for his opening statement.

Mr. EHLERS. I thank the gentleman for yielding. As I stated last week, following the decision to postpone the markup, the additional days between our last meeting and today's proceeding have provided us with an opportunity to review this bill in greater detail. Unfortunately, the additional time for review has not changed my perception of this bill. As I have said in the past, I continue to have deep concerns about H.R. 811. Realizing that time is limited, I will summarize just a few of them here. Let me emphasize that from the first time Mr. Holt introduced this bill, I favored the concept of the bill. The difficulty is in the details.

First the burden placed upon the States by this bill is unnecessary, and, by all accounts, unmanageable. Over the past several weeks, this committee has heard from Secretaries of State, election experts, concerned citizens and other groups urging us to reconsider passage of this bill and suggesting many amendments.

Let me just show you what we have received. I don't know what the majority has received. These are letters from State and county election officials from over 35 States objecting to the bill as it was originally introduced and are still objecting to the bill, even in spite of the few amendments that have been made.

They are imploring us not to pass this legislation. The number has grown since our last meeting and the letters continue to come in from across the Nation. These are the people who are most familiar with our election systems, telling us that they simply cannot effectively administer the 2008 election if Congress ignores their pleas and forces this legislation upon them.

There are other factors. One of the chief provisions in H.R. 811 is the voter verified paper trail. As I have stated in the past, I am not generally opposed to the idea of a redundant method of capturing vote totals, but I believe all avenues should be explored to accomplish duplicate capture of this information—not just paper.

As we all saw in the 2000 elections, in the days of hanging and pregnant chads, paper is far from foolproof. For example the punch card ballots are paper and that is what started this whole reform effort because people were not happy with that. We owe it to the American public to give thoughtful consideration to what method of duplicate capture votes would serve them best. I have not seen any effort by this committee to do that. To resort back to paper without additional research into alternative technologies that may be more reliable would be hasty and ill-advised.

In addition, the VVPAT puts visually impaired voters at a greater advantage than those with other types disabilities creating an even larger disparity between segments of the disabled community and the general public. Intellectual property issues are also an area of concern, since this bill prescribes that electronic voting machine

vendors must reveal propriety source codes for inspection by outside entities.

Not only will taking such steps compromise the integrity of this system and put it at high risk of malfeasance, but taking some drastic measures will also limit the desire of these companies to continue to develop new technologies and improve their existing systems.

Common sense will tell you if a businessman is required to give away his product for free—in this case, the product being the source code—you have also taken away his motivation to continue enhancing that product. We would be, in effect, cutting off our collective nose to spite our face if we took away the desire of these vendors to continually improve their technologies.

Let me also decry the fact that while under HAVA, we worked very hard between the House and the Senate, with both parties involved in constant meetings to try to work out differences. In this case, we are rushing this bill through without adequate consultation between the parties, without an opportunity to hear our concerns expressed and to work with the Senate on this bill.

Another area of concern is the funding request in the legislation which a number of election experts have said will be inadequate, leaving taxpayers holding the bill. We have a duty to spend the public's money wisely. Using it to implement legislation that the States have told us they can't comply with in time for the next election, corporations have told us compromises their financial health and the disabled community has told us puts them at greater disadvantage, is reckless.

Finally, we will propose several amendments today that address weaknesses of H.R. 811, and I appreciate the thoughtful consideration of all the Members of this Committee when voting on these changes. HAVA effected meaningful change that met the shared goals of both the majority and minority parties to improve our Nation's voting system. HAVA also worked very hard with the voting officials from all the States. I am hopeful we will be able to change course today and put aside partisanship to achieve our shared objectives with this bill and many other measures to come.

Thank you.

The CHAIRMAN. Thank you. Are there any other opening statements?

Ms. LOFGREN. Mr. Chairman.

The CHAIRMAN. Gentledady from California Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. I would like to thank Congressman Rush Holt for introducing H.R. 811, the Voter Confidence and Increased Accessibility Act of 2007. As of this morning, H.R. 811 has 212 cosponsors, both Republicans and Democrats. It is a bipartisan bill with bipartisan support. Politics and political affiliation should not keep us from making the changes needed to restore the confidence of our citizens in the electoral process. Our election process must be open and transparent to ensure public confidence.

Over the past few months we have held hearings in the Election Subcommittee that I chair on issues dealing with H.R. 811. We have heard about problems faced by voters who need machines with disability access. We have listened to State and local election

officials with very differing points of view. Some have no problems with their current voting systems while a majority of others find that the path to a transparent electoral process is through a voter verifiable paper trail.

We have also heard from the guys I represent, the geek squad, as I like to refer to them, about voting systems software. The technology behind these voting systems needs to be accessible to the Government entities, academic experts and parties to litigation. That technology must also be tested and certified by labs that are, in no way, connected to interested parties.

We have also spent time going through the audit process and the best ways to count ballots to ensure voter confidence. In the hearings, we have heard many different points of view. I will offer, at the conclusion of my remarks, an amendment in the nature of a substitute and will discuss the merits of that during the debate on that motion, the substitute motion. We have received letters of support from voting rights activists and countless individuals, and when our colleague, Mr. Ehlers, held up his stack, I asked the staff to bring those boxes up and put those on the table because within those boxes are 185,000 signatures in support of the whole bill, one signature roughly for every precinct in the United States. Additionally, 20,497 signatures additionally sent in favor of this bill.

We have groups in support of H.R. 811, Common Cause, the Lawyers Committee For Civil Rights, Vote Trust U.S.A., the Electronic Frontier Foundation, and on and on. I ask unanimous support to put the list in record.

We have heard the concerns of State and local election officials and will try to address them in the substitute, but we cannot let a flawed voting system continue. I know there are members of this House who do not feel that we need to make changes in our voting system.

There are Members who think the best way to go is to leave our voting system untouched or to provide very vague guidance for improvement. While I wish we can just ask that our voting system be improved and it would happen, history has taught us that this does not always work. We cannot be faced with more Federal elections that are fundamentally flawed.

The integrity of our voting system and voter confidence must be ensured for 2008 and beyond. And H.R. 811 is the first step in gaining the trust of the American voters and to get that trust back. So Mr. Chairman, I would be pleased to offer my substitute for consideration and do offer my substitute for H.R. 811 for consideration.

The CHAIRMAN. I thank the gentlelady. Are there any other opening statements?

Hearing no opening statements, the Chair now calls up and lays before the Committee H.R. 811, a bill to amend the Help America Vote Act of 2002, to require a voter-verified permanent paper ballot under title III of such Act, and for other purposes.

[The information follows:]

110TH CONGRESS  
1ST SESSION

# H. R. 811

To amend the Help America Vote Act of 2002 to require a voter-verified permanent paper ballot under title III of such Act, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2007

Mr. HOLT (for himself, Mr. TOM DAVIS of Virginia, Mr. WEXLER, Mr. EMANUEL, Mr. PETRI, Mr. WOLF, Mr. LEWIS of Georgia, Mr. LANGEVIN, Mr. COOPER, Mrs. JONES of Ohio, Mr. CLAY, Mr. SILAYS, Ms. KAPTUR, Mr. ENGLISH of Pennsylvania, Mr. HASTINGS of Florida, Mr. RAMSTAD, Mr. MEEK of Florida, Mr. ISSA, Mr. CUMMINGS, Mrs. BIGGERT, Ms. LEE, Mr. CASTLE, Ms. KILPATRICK of Michigan, Mr. KUIHL of New York, Ms. CORRINE BROWN of Florida, Mr. MACK, Mr. SCOTT of Virginia, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Mr. BECERRA, Ms. BERKLEY, Mr. BERMAN, Mr. BERRY, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Mr. BOREN, Mr. BOSWELL, Mr. BOUCHIER, Mr. BOYD of Florida, Mr. BRADY of Pennsylvania, Mr. BRALEY of Iowa, Mr. BUTTERFIELD, Mrs. CAPPS, Mr. CARNAHAN, Mr. CHANDLER, Mr. COHEN, Mr. COSTA, Mr. COSTELLO, Mr. COURTNEY, Mr. CROWLEY, Mr. DAVIS of Illinois, Mr. LINCOLN DAVIS of Tennessee, Mrs. DAVIS of California, Mr. DEFazio, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DICKS, Mr. DINGELL, Mr. DOGGETT, Mr. DOYLE, Mr. EDWARDS, Mr. ELLISON, Mr. ENGEL, Ms. ESTIHO, Mr. ETHERIDGE, Mr. FATTAH, Mr. FILNER, Mr. FORTUÑO, Mr. FRANK of Massachusetts, Mrs. GILLIBRAND, Mr. GONZALEZ, Mr. GORDON of Tennessee, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of New York, Ms. HARMAN, Ms. HERSETH, Mr. HIGGINS, Mr. HINCHEY, Ms. IHONO, Mr. HODES, Mr. HOLDEN, Mr. HONDA, Ms. HOOLEY, Mr. INSLEE, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JOHNSON of Georgia, Mr. KAGEN, Mr. KENNEDY, Mr. KILDEE, Mr. KIND, Mr. KLEIN of Florida, Mr. KUCINICH, Mr. LANTOS, Mr. LARSEN of Washington, Mr. LOEBSACK, Mrs. LOWEY, Mrs. MCCARTHY of New York, Ms. MCCOLLUM of Minnesota, Mr. MCINTYRE, Mr. MCNULTY, Mrs. MALONEY of New York, Mr. MARSHALL, Mr. MATHESON, Ms. MATSUI, Mr. MELANCON, Mr. MICHAUD, Mr. MILLER of North Carolina, Mr. GEORGE MILLER of California, Mr. MITCHELL, Mr. MOLLOLIAN, Mr. MOORE of Kansas, Mr. MORAN of Virginia, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. NADLER, Mrs. NAPOLITANO, Ms. NORTON, Mr. OBERSTAR, Mr. OBEY, Mr. OLIVER, Mr. ORTIZ, Mr.

PALLONE, Mr. PASTOR, Mr. PAYNE, Mr. PETERSON of Minnesota, Mr. PRICE of North Carolina, Mr. REYES, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. SALAZAR, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Ms. SCHAKOWSKY, Mr. SCHIFF, Ms. SCHWARTZ, Mr. SCOTT of Georgia, Mr. SERRANO, Mr. SHERMAN, Mr. SHULER, Ms. SLAUGHTER, Mr. SMITH of Washington, Ms. SOLIS, Mr. SPRATT, Mr. STARK, Mr. STUPAK, Ms. SUTTON, Mr. TANNER, Mrs. TAUSCHER, Mr. TAYLOR, Mr. TIERNEY, Mr. TOWNS, Mr. UDALL of Colorado, Mr. VAN HOLLEN, Mr. WALZ of Minnesota, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Ms. WATSON, Mr. WAXMAN, Mr. WEINER, Ms. WOOLSEY, Mr. WU, Mr. WYNN, and Mr. ALTMIRE) introduced the following bill; which was referred to the Committee on House Administration

---

## A BILL

To amend the Help America Vote Act of 2002 to require a voter-verified permanent paper ballot under title III of such Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Voter Confidence and  
 5 Increased Accessibility Act of 2007”.

6 **SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECU-**  
 7 **RITY THROUGH VOTER-VERIFIED PERMA-**  
 8 **NENT PAPER BALLOT.**

9 (a) **BALLOT VERIFICATION AND AUDIT CAPACITY.**—

10 (1) **IN GENERAL.**—Section 301(a)(2) of the  
 11 Help America Vote Act of 2002 (42 U.S.C.  
 12 15481(a)(2)) is amended to read as follows:

1           “(2) BALLOT VERIFICATION AND AUDIT CAPAC-  
2           ITY.—

3           “(A) IN GENERAL.—

4           “(i) The voting system shall require  
5           the use of or produce an individual voter-  
6           verified paper ballot of the voter’s vote  
7           that shall be created by or made available  
8           for inspection and verification by the voter  
9           before the voter’s vote is cast and counted.  
10          For purposes of this clause, examples of  
11          such a ballot include a paper ballot marked  
12          by the voter for the purpose of being  
13          counted by hand or read by an optical  
14          scanner or other similar device, a paper  
15          ballot prepared by the voter to be mailed  
16          to an election official (whether from a do-  
17          mestic or overseas location), a paper ballot  
18          created through the use of a ballot mark-  
19          ing device or system, or a paper ballot pro-  
20          duced by a touch screen or other electronic  
21          voting machine, so long as in each case the  
22          voter is permitted to verify the ballot in a  
23          paper form in accordance with this sub-  
24          paragraph.

1           “(ii) The voting system shall provide  
2           the voter with an opportunity to correct  
3           any error made by the system in the voter-  
4           verified paper ballot before the permanent  
5           voter-verified paper ballot is preserved in  
6           accordance with subparagraph (B)(i).

7           “(iii) The voting system shall not pre-  
8           serve the voter-verifiable paper ballots in  
9           any manner that makes it possible, at any  
10          time after the ballot has been cast, to asso-  
11          ciate a voter with the record of the voter’s  
12          vote.

13          “(B) MANUAL AUDIT CAPACITY.—

14          “(i) The permanent voter-verified  
15          paper ballot produced in accordance with  
16          subparagraph (A) shall be preserved—

17                  “(I) in the case of votes cast at  
18                  the polling place on the date of the  
19                  election, within the polling place in  
20                  the manner or method in which all  
21                  other paper ballots are preserved  
22                  within such polling place;

23                  “(II) in the case of votes cast at  
24                  the polling place prior to the date of  
25                  the election or cast by mail, in a man-

1           ner which is consistent with the man-  
2           ner employed by the jurisdiction for  
3           preserving such ballots in general; or

4           “(III) in the absence of either  
5           such manner or method, in a manner  
6           which is consistent with the manner  
7           employed by the jurisdiction for pre-  
8           serving paper ballots in general.

9           “(ii) Each paper ballot produced pur-  
10          suant to subparagraph (A) shall be suit-  
11          able for a manual audit equivalent to that  
12          of a paper ballot voting system.

13          “(iii) In the event of any inconsis-  
14          tencies or irregularities between any elec-  
15          tronic vote tallies and the vote tallies de-  
16          termined by counting by hand the indi-  
17          vidual permanent paper ballots produced  
18          pursuant to subparagraph (A), and subject  
19          to subparagraph (D), the individual perma-  
20          nent paper ballots shall be the true and  
21          correct record of the votes cast and shall  
22          be used as the official ballots for purposes  
23          of any recount or audit conducted with re-  
24          spect to any election for Federal office in  
25          which the voting system is used.

1           “(C) SPECIAL RULE FOR VOTES CAST BY  
2 ABSENT MILITARY AND OVERSEAS VOTERS.—In  
3 the case of votes cast by absent uniformed serv-  
4 ices voters and overseas voters under the Uni-  
5 formed and Overseas Citizens Absentee Voting  
6 Act, the ballots cast by such voters shall serve  
7 as the permanent paper ballot under subpara-  
8 graph (A) in accordance with protocols estab-  
9 lished by the Commission, in consultation with  
10 the Secretary of Defense after notice and op-  
11 portunity for public comment, which preserve  
12 the privacy of the voter and are consistent with  
13 the requirements of such Act and this Act, ex-  
14 cept that to the extent that such protocols per-  
15 mit the use of electronic mail in the delivery or  
16 submission of such ballots, paragraph (11) shall  
17 not apply with respect to the delivery or sub-  
18 mission of the ballots.

19           “(D) SPECIAL RULE FOR TREATMENT OF  
20 DISPUTES WHEN PAPER BALLOTS HAVE BEEN  
21 SHOWN TO BE COMPROMISED.—In the event of  
22 any inconsistency between any electronic vote  
23 tallies and the vote tallies determined by count-  
24 ing by hand the individual permanent paper  
25 ballots produced pursuant to subparagraph (A),

1 any person seeking to show that the electronic  
2 vote tally should be given preference in deter-  
3 mining the official count for the election shall  
4 be required to demonstrate, by clear and con-  
5 vincing evidence, that the paper ballots have  
6 been compromised (by damage or mischief or  
7 otherwise) and that a sufficient number of the  
8 ballots have been so compromised that the re-  
9 sult of the election would be changed. For pur-  
10 poses of the previous sentence, the paper ballots  
11 associated with each voting machine shall be  
12 considered on a voting-machine-by-voting-ma-  
13 chine basis, and only the sets of paper ballots  
14 deemed compromised, if any, shall be consid-  
15 ered in the calculation of whether or not the  
16 election would be changed due to the com-  
17 promised paper ballots.”.

18 (2) CONFORMING AMENDMENT CLARIFYING AP-  
19 PPLICABILITY OF ALTERNATIVE LANGUAGE ACCESSI-  
20 BILITY.—Section 301(a)(4) of such Act (42 U.S.C.  
21 15481(a)(4)) is amended by inserting “(including  
22 the paper ballots required to be produced under  
23 paragraph (2) and the notice required under para-  
24 graph (8))” after “voting system”.

1           (3) OTHER CONFORMING AMENDMENTS.—Sec-  
2           tion 301(a)(1) of such Act (42 U.S.C. 15481(a)(1))  
3           is amended—

4                   (A) in subparagraph (A)(i), by striking  
5                   “counted” and inserting “counted, in accord-  
6                   ance with paragraphs (2) and (3)”;

7                   (B) in subparagraph (A)(ii), by striking  
8                   “counted” and inserting “counted, in accord-  
9                   ance with paragraphs (2) and (3)”;

10                  (C) in subparagraph (A)(iii), as amended  
11                  by paragraph (2), by striking “counted” each  
12                  place it appears and inserting “counted, in ac-  
13                  cordance with paragraphs (2) and (3)”;

14                  (D) in subparagraph (B)(ii), by striking  
15                  “counted” and inserting “counted, in accord-  
16                  ance with paragraphs (2) and (3)”.

17           (b) ACCESSIBILITY AND BALLOT VERIFICATION FOR  
18           INDIVIDUALS WITH DISABILITIES.—

19           (1) IN GENERAL.—Section 301(a)(3)(B) of  
20           such Act (42 U.S.C. 15481(a)(3)(B)) is amended to  
21           read as follows:

22                   “(B)(i) satisfy the requirement of subpara-  
23                   graph (A) through the use of at least one voting  
24                   system equipped for individuals with disabilities  
25                   at each polling place; and

1           “(ii) meet the requirements of subpara-  
2           graph (A) and paragraph (2)(A) by using a sys-  
3           tem that—

4                   “(I) allows the voter to privately and  
5                   independently verify the content of the per-  
6                   manent paper ballot through the conver-  
7                   sion of the printed content into accessible  
8                   media, and

9                   “(II) ensures that the entire process  
10                  of ballot verification and vote casting is  
11                  equipped for individuals with disabilities.”.

12           (2) SPECIFIC REQUIREMENT OF STUDY, TEST-  
13           ING, AND DEVELOPMENT OF ACCESSIBLE BALLOT  
14           VERIFICATION MECHANISMS.—

15                   (A) STUDY AND REPORTING.—Subtitle C  
16                   of title II of such Act (42 U.S.C. 15381 et seq.)  
17                   is amended—

18                           (i) by redesignating section 247 as  
19                           section 248; and

20                           (ii) by inserting after section 246 the  
21                           following new section:

22   **“SEC. 247. STUDY AND REPORT ON ACCESSIBLE BALLOT**  
23   **VERIFICATION MECHANISMS.**

24           “(a) STUDY AND REPORT.—The Director of the Na-  
25   tional Institute of Standards and Technology shall study,

1 test, and develop best practices to enhance the accessibility  
2 of ballot verification mechanisms for individuals with dis-  
3 abilities, for voters whose primary language is not English,  
4 and for voters with difficulties in literacy, including best  
5 practices for the mechanisms themselves and the processes  
6 through which the mechanisms are used. In carrying out  
7 this section, the Director shall specifically investigate ex-  
8 isting and potential methods or devices that will assist  
9 such individuals and voters in creating voter-verified paper  
10 ballots and in reading or transmitting the information  
11 printed or marked on such ballots back to such individuals  
12 and voters.

13 “(b) DEADLINE.—The Director shall complete the re-  
14 quirements of subsection (a) not later than January 1,  
15 2010.

16 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to carry out subsection  
18 (a) \$1,000,000, to remain available until expended.”.

19 (B) CLERICAL AMENDMENT.—The table of  
20 contents of such Act is amended—

21 (i) by redesignating the item relating  
22 to section 247 as relating to section 248;  
23 and

24 (ii) by inserting after the item relating  
25 to section 246 the following new item:

“Sec. 247. Study and report on accessible voter verification mechanisms.”.

1           (3) CLARIFICATION OF ACCESSIBILITY STAND-  
2 ARDS UNDER VOLUNTARY VOTING SYSTEM GUID-  
3 ANCE.—In adopting any voluntary guidance under  
4 subtitle B of title III of the Help America Vote Act  
5 with respect to the accessibility of the ballot  
6 verification requirements for individuals with disabili-  
7 ties, the Election Assistance Commission shall in-  
8 clude and apply the same accessibility standards ap-  
9 plicable under the voluntary guidance adopted for  
10 accessible voting systems under such subtitle.

11       (e) ADDITIONAL VOTING SYSTEM REQUIREMENTS.—

12           (1) REQUIREMENTS DESCRIBED.—Section  
13 301(a) of such Act (42 U.S.C. 15481(a)) is amend-  
14 ed by adding at the end the following new para-  
15 graphs:

16           “(7) INSTRUCTION OF ELECTION OFFICIALS.—  
17 Each State shall ensure that all election officials are  
18 instructed on the right of any individual who re-  
19 quires assistance to vote by reason of blindness,  
20 other disability, or inability to read or write to be  
21 given assistance by a person chosen by that indi-  
22 vidual under section 208 of the Voting Rights Act  
23 of 1965.

24           “(8) INSTRUCTION REMINDING VOTERS OF IM-  
25 PORTANCE OF VERIFYING PAPER BALLOT.—

1           “(A) IN GENERAL.—The appropriate elec-  
2           tion official at each polling place shall cause to  
3           be placed in a prominent location in the polling  
4           place a notice containing the following state-  
5           ment, in boldface type, large font, and using  
6           only upper-case letters: ‘THE PAPER BAL-  
7           LOT REPRESENTING YOUR VOTE  
8           SHALL SERVE AS THE VOTE OF  
9           RECORD IN ALL RECOUNTS AND AU-  
10          DITS. DO NOT LEAVE THE VOTING  
11          BOOTH UNTIL YOU HAVE CONFIRMED  
12          THAT IT ACCURATELY RECORDS YOUR  
13          VOTE’.

14           “(B) SYSTEMS FOR INDIVIDUALS WITH  
15          DISABILITIES.—All voting systems equipped for  
16          individuals with disabilities shall transmit by  
17          accessible media the statement referred to in  
18          subparagraph (A), as well as an explanation of  
19          the verification process described in paragraph  
20          (3)(B)(ii).

21           “(9) PROHIBITION OF USE OF UNDISCLOSED  
22          SOFTWARE IN VOTING SYSTEMS.—No voting system  
23          used in an election for Federal office shall at any  
24          time contain or use any software not certified by the  
25          State for use in the election or any software undis-

1 closed to the State in the certification process. The  
2 appropriate election official shall disclose, in elec-  
3 tronic form, the source code, object code, and exe-  
4 cutable representation of the voting system software  
5 and firmware to the Commission, including ballot  
6 programming files, and the Commission shall make  
7 that source code, object code, executable representa-  
8 tion, and ballot programming files available for in-  
9 spection promptly upon request to any person.

10 “(10) PROHIBITION OF USE OF WIRELESS COM-  
11 MUNICATIONS DEVICES IN VOTING SYSTEMS.—No  
12 voting system shall contain, use, or be accessible by  
13 any wireless, power-line, remote, wide area, or con-  
14 cealed communication device at all.

15 “(11) PROHIBITING CONNECTION OF SYSTEM  
16 OR TRANSMISSION OF SYSTEM INFORMATION OVER  
17 THE INTERNET.—No component of any voting de-  
18 vice upon which votes are cast shall be connected to  
19 the Internet at any time.

20 “(12) SECURITY STANDARDS FOR VOTING SYS-  
21 TEMS USED IN FEDERAL ELECTIONS.—

22 “(A) IN GENERAL.—No voting system may  
23 be used in an election for Federal office unless  
24 the manufacturer of such system and the elec-  
25 tion officials using such system meet the appli-

1 cable requirements described in subparagraph  
2 (B).

3 “(B) REQUIREMENTS DESCRIBED.—The  
4 requirements described in this subparagraph  
5 are as follows:

6 “(i) The manufacturer and the elec-  
7 tion officials shall document the secure  
8 chain of custody for the handling of all  
9 software, hardware, vote storage media,  
10 and ballots used in connection with voting  
11 systems, and shall make the information  
12 available upon request to the Commission.

13 “(ii) The manufacturer of the soft-  
14 ware used in the operation of the system  
15 shall provide the appropriate election offi-  
16 cial with updated information regarding  
17 the identification of each individual who  
18 participated in the writing of the software,  
19 including specific information regarding  
20 whether the individual has ever been con-  
21 victed of a crime involving election, ac-  
22 counting, or computer security fraud.

23 “(iii) The manufacturer shall provide  
24 the appropriate election official with the  
25 information necessary for the official to

1 provide information to the Commission  
2 under paragraph (9).

3 “(iv) After the appropriate election of-  
4 ficial has certified the source code, object  
5 code, and executable representation of the  
6 voting system software for use in an elec-  
7 tion, the manufacturer may not—

8 “(I) alter such codes and rep-  
9 resentation; or

10 “(II) insert or use in the voting  
11 system any software not certified by  
12 the State for use in the election.

13 “(v) The appropriate election official  
14 shall ensure that all voting machines and  
15 related supplies to be used in the election  
16 shall remain secured within storage facili-  
17 ties arranged for by the election official,  
18 and shall not be removed from such facili-  
19 ties until such time as they are to be deliv-  
20 ered to the relevant polling place and se-  
21 cured at the polling place until used in the  
22 election.

23 “(vi) The manufacturer shall meet  
24 standards established by the Commission  
25 to prevent the existence or appearance of

1 any conflict of interest with respect to can-  
2 didates for public office and political par-  
3 ties, including standards to ensure that the  
4 manufacturer's officers and directors do  
5 not hold positions of authority in any polit-  
6 ical party or in any partisan political cam-  
7 paign, and shall certify to the Commission  
8 not later than January 31 of each even-  
9 numbered year that it meets the standards  
10 established under this clause.

11 “(vii) At the request of the Commis-  
12 sion, the appropriate election official shall  
13 submit information to the Commission re-  
14 garding the State's compliance with this  
15 subparagraph.

16 “(13) DURABILITY AND READABILITY REQUIRE-  
17 MENTS FOR BALLOTS.—

18 “(A) DURABILITY REQUIREMENTS FOR  
19 PAPER BALLOTS.—All voter-verified paper bal-  
20 lots required to be used under this Act (includ-  
21 ing the emergency paper ballots used under  
22 paragraph (14)) shall be marked, printed, or  
23 recorded on durable paper of archival quality ca-  
24 pable of withstanding multiple counts and re-  
25 counts without compromising the fundamental

1 integrity of the ballots, and capable of retaining  
2 the information marked, printed, or recorded on  
3 them for the full duration of the retention and  
4 preservation period called for by title III of the  
5 Civil Rights Act of 1960 (42 U.S.C. 1974 et  
6 seq.) or under applicable State law, whichever is  
7 longer.

8 “(B) READABILITY REQUIREMENTS FOR  
9 MACHINE-MARKED OR PRINTED PAPER BAL-  
10 LOTS.—All voter-verified paper ballots marked  
11 or printed through the use of a marking or  
12 printing device shall be clearly readable by the  
13 naked eye and by a scanner or other device  
14 equipped for voters with disabilities.

15 “(14) PROHIBITING TURNING INDIVIDUALS  
16 AWAY FROM POLLING PLACES BECAUSE OF PROB-  
17 LEMS WITH OR SHORTAGES OF EQUIPMENT, BAL-  
18 LOTS, OR SUPPLIES.—

19 “(A) ENSURING ADEQUATE EQUIPMENT  
20 AND SUPPLIES.—Each State shall ensure that  
21 the voting systems it uses to conduct elections  
22 for Federal office are designed in a manner  
23 that ensures that no voter will be unable to cast  
24 a ballot at a polling place due to a shortage or

1 failure of voting equipment, ballots, or nec-  
2 essary supplies.

3 “(B) USE OF EMERGENCY PAPER BALLOTS  
4 IN CASE OF SYSTEM OR EQUIPMENT FAIL-  
5 URE.—In the event of the failure of voting  
6 equipment or other circumstance at a polling  
7 place that causes a delay, any individual who is  
8 waiting at the polling place to cast a ballot in  
9 an election for Federal office and who would be  
10 delayed due to such failure or other cir-  
11 cumstance shall be advised immediately of the  
12 individual’s right to use an emergency paper  
13 ballot, and upon request shall be provided with  
14 an emergency paper ballot for the election and  
15 the supplies necessary to mark the ballot. Any  
16 emergency paper ballot which is cast by an indi-  
17 vidual under this subparagraph shall be counted  
18 and otherwise treated as a regular ballot and  
19 not as a provisional ballot, unless the individual  
20 casting the ballot would have otherwise been re-  
21 quired to cast a provisional ballot if the voting  
22 equipment at the polling place had not failed.”.

23 (2) REQUIRING LABORATORIES TO MEET  
24 STANDARDS PROHIBITING CONFLICTS OF INTEREST

1 AS CONDITION OF ACCREDITATION FOR TESTING OF  
2 VOTING SYSTEM HARDWARE AND SOFTWARE.—

3 (A) IN GENERAL.—Section 231(b) of such  
4 Act (42 U.S.C. 15371(b)) is amended by add-  
5 ing at the end the following new paragraphs:

6 “(3) PROHIBITING CONFLICTS OF INTEREST;  
7 ENSURING AVAILABILITY OF RESULTS.—

8 “(A) IN GENERAL.—A laboratory may not  
9 be accredited by the Commission for purposes  
10 of this section unless—

11 “(i) the laboratory certifies that the  
12 only compensation it receives for the test-  
13 ing carried out in connection with the cer-  
14 tification, decertification, and recertifi-  
15 cation of the manufacturer’s voting system  
16 hardware and software is the payment  
17 made from the Testing Escrow Account  
18 under paragraph (4);

19 “(ii) the laboratory meets the stand-  
20 ards applicable to the manufacturers of  
21 voting systems under section  
22 301(a)(11)(B)(vi), together with such  
23 standards as the Commission shall estab-  
24 lish (after notice and opportunity for pub-  
25 lic comment) to prevent the existence or

1 appearance of any conflict of interest in  
2 the testing carried out by the laboratory  
3 under this section, including standards to  
4 ensure that the laboratory does not have a  
5 financial interest in the manufacture, sale,  
6 and distribution of voting system hardware  
7 and software, and is sufficiently inde-  
8 pendent from other persons with such an  
9 interest;

10 “(iii) the laboratory certifies that it  
11 will permit an expert designated by the  
12 Commission to observe any testing the lab-  
13 oratory carries out under this section; and

14 “(iv) the laboratory, upon completion  
15 of any testing carried out under this sec-  
16 tion, discloses the test protocols, results,  
17 and all communication between the labora-  
18 tory and the manufacturer to the Commis-  
19 sion.

20 “(B) AVAILABILITY OF RESULTS.—Upon  
21 receipt of information under subparagraph (A),  
22 the Commission shall make the information  
23 available promptly to election officials and the  
24 public.

1           “(4) PROCEDURES FOR CONDUCTING TESTING;  
2           PAYMENT OF USER FEES FOR COMPENSATION OF  
3           ACCREDITED LABORATORIES.—

4                   “(A) ESTABLISHMENT OF ESCROW AC-  
5                   COUNT.—The Commission shall establish an es-  
6                   crow account (to be known as the ‘Testing Es-  
7                   crow Account’) for making payments to accred-  
8                   ited laboratories for the costs of the testing car-  
9                   ried out in connection with the certification, de-  
10                  certification, and recertification of voting sys-  
11                  tem hardware and software.

12                   “(B) SCHEDULE OF FEES.—In consulta-  
13                   tion with the accredited laboratories, the Com-  
14                   mission shall establish and regularly update a  
15                   schedule of fees for the testing carried out in  
16                   connection with the certification, decertification,  
17                   and recertification of voting system hardware  
18                   and software, based on the reasonable costs ex-  
19                   pected to be incurred by the accredited labora-  
20                   tories in carrying out the testing for various  
21                   types of hardware and software.

22                   “(C) REQUESTS AND PAYMENTS BY MANU-  
23                   FACTURERS.—A manufacturer of voting system  
24                   hardware and software may not have the hard-

1           ware or software tested by an accredited labora-  
2           tory under this section unless—

3                   “(i) the manufacturer submits a de-  
4                   tailed request for the testing to the Com-  
5                   mission; and

6                   “(ii) the manufacturer pays to the  
7                   Commission, for deposit into the Testing  
8                   Escrow Account established under sub-  
9                   paragraph (A), the applicable fee under the  
10                  schedule established and in effect under  
11                  subparagraph (B).

12                 “(D) SELECTION OF LABORATORY.—Upon  
13                 receiving a request for testing and the payment  
14                 from a manufacturer required under subpara-  
15                 graph (C), the Commission shall select at ran-  
16                 dom, from all laboratories which are accredited  
17                 under this section to carry out the specific test-  
18                 ing requested by the manufacturer, an accred-  
19                 ited laboratory to carry out the testing.

20                 “(E) PAYMENTS TO LABORATORIES.—  
21                 Upon receiving a certification from a laboratory  
22                 selected to carry out testing pursuant to sub-  
23                 paragraph (D) that the testing is completed,  
24                 along with a copy of the results of the test as  
25                 required under paragraph (3)(A)(iii), the Com-

1 mission shall make a payment to the laboratory  
2 from the Testing Escrow Account established  
3 under subparagraph (A) in an amount equal to  
4 the applicable fee paid by the manufacturer  
5 under subparagraph (C)(ii).

6 “(5) DISSEMINATION OF ADDITIONAL INFORMA-  
7 TION ON ACCREDITED LABORATORIES.—

8 “(A) INFORMATION ON TESTING.—Upon  
9 completion of the testing of a voting system  
10 under this section, the Commission shall  
11 promptly disseminate to the public the identi-  
12 fication of the laboratory which carried out the  
13 testing.

14 “(B) LABORATORIES WITH ACCREDITA-  
15 TION REVOKED OR SUSPENDED.—If the Com-  
16 mission revokes, terminates, or suspends the ac-  
17 creditation of a laboratory under this section,  
18 the Commission shall promptly notify Congress,  
19 the chief State election official of each State,  
20 and the public.”.

21 (B) CONFORMING AMENDMENTS.—Section  
22 231 of such Act (42 U.S.C. 15371) is further  
23 amended—

24 (i) in subsection (a)(1), by striking  
25 “testing, certification,” and all that follows

1 and inserting the following: “testing of vot-  
2 ing system hardware and software by ac-  
3 credited laboratories in connection with the  
4 certification, decertification, and recertifi-  
5 cation of the hardware and software for  
6 purposes of this Act.”;

7 (ii) in subsection (a)(2), by striking  
8 “testing, certification,” and all that follows  
9 and inserting the following: “testing of its  
10 voting system hardware and software by  
11 the laboratories accredited by the Commis-  
12 sion under this section in connection with  
13 certifying, decertifying, and recertifying  
14 the hardware and software.”;

15 (iii) in subsection (b)(1), by striking  
16 “testing, certification, decertification, and  
17 recertification” and inserting “testing”;  
18 and

19 (iv) in subsection (d), by striking  
20 “testing, certification, decertification, and  
21 recertification” each place it appears and  
22 inserting “testing”.

23 (C) DEADLINE FOR ESTABLISHMENT OF  
24 STANDARDS AND ESCROW ACCOUNT.—The  
25 Election Assistance Commission shall establish

1 the standards described in section 231(b)(3) of  
2 the Help America Vote Act of 2002 and the  
3 Testing Eserow Account described in section  
4 231(b)(4) of such Act (as added by subpara-  
5 graph (A)) not later than January 1, 2008.

6 (3) SPECIAL CERTIFICATION OF BALLOT DURA-  
7 BILITY AND READABILITY REQUIREMENTS FOR  
8 STATES NOT CURRENTLY USING PAPER BALLOTS.—  
9 If any of the voting systems used in a State for the  
10 regularly scheduled 2006 general elections for Fed-  
11 eral office did not operate by having voters cast  
12 votes on paper ballots (such as through the use of  
13 an optical scan voting system), the State shall cer-  
14 tify to the Election Assistance Commission not later  
15 than 90 days after the date of the enactment of this  
16 Act that the State will be in compliance with the re-  
17 quirements of section 301(a)(13) of the Help Amer-  
18 ica Vote of 2002, as added by paragraph (1), in ac-  
19 cordance with the deadline established under this  
20 Act, and shall include in the certification the meth-  
21 ods by which the State will meet the requirements.

22 (d) AVAILABILITY OF ADDITIONAL FUNDING TO EN-  
23 ABLE STATES TO MEET COSTS OF REVISED REQUIRE-  
24 MENTS.—

1           (1) EXTENSION OF REQUIREMENTS PAYMENTS  
2           FOR MEETING REVISED REQUIREMENTS.—Section  
3           257(a) of the Help America Vote Act of 2002 (42  
4           U.S.C. 15407(a) is amended by adding at the end  
5           the following new paragraph:

6           “(4) For fiscal year 2007, \$300,000,000, except  
7           that any funds provided under the authorization  
8           made by this paragraph shall be used by a State  
9           only to meet the requirements of title III which are  
10          first imposed on the State pursuant to the amend-  
11          ments made by section 2 of the Voter Confidence  
12          and Increased Accessibility Act of 2007, or to other-  
13          wise modify or replace its voting systems in response  
14          to such amendments.”.

15          (2) USE OF REVISED FORMULA FOR ALLOCA-  
16          TION OF FUNDS.—Section 252(b) of such Act (42  
17          U.S.C. 15402(b)) is amended to read as follows:

18          “(b) STATE ALLOCATION PERCENTAGE DEFINED.—

19                 “(1) IN GENERAL.—Except as provided in para-  
20                 graph (2), the ‘State allocation percentage’ for a  
21                 State is the amount (expressed as a percentage)  
22                 equal to the quotient of—

23                         “(A) the voting age population of the State  
24                         (as reported in the most recent decennial cen-  
25                         sus); and

1           “(B) the total voting age population of all  
2           States (as reported in the most recent decennial  
3           census).

4           “(2) SPECIAL RULE FOR PAYMENTS FOR FIS-  
5           CAL YEAR 2007.—

6           “(A) IN GENERAL.—In the case of the re-  
7           quirements payment made to a State for fiscal  
8           year 2007, the ‘State allocation percentage’ for  
9           a State is the amount (expressed as a percent-  
10          age) equal to the quotient of—

11           “(i) the number of remedial precincts  
12          in the State; and

13           “(ii) the total number of remedial pre-  
14          cincts in all States.

15          “(B) REMEDIAL PRECINCT DEFINED.—In  
16          this paragraph, a ‘remedial precinct’ means any  
17          precinct (or equivalent location) within the  
18          State for which the voting system used to ad-  
19          minister the regularly scheduled general election  
20          for Federal office held in November 2006—

21           “(i) did not use paper as the medium  
22          for vote casting, or if the system used  
23          paper, did not use durable paper of archi-  
24          val quality; or

1           “(ii) did not provide that the entire  
2           process of ballot verification was equipped  
3           for individuals with disabilities.”.

4           (3) INCREASE IN STATE MINIMUM SHARE OF  
5           PAYMENT.—Section 252(c) of such Act (42 U.S.C.  
6           15402(c)) is amended—

7           (A) in paragraph (1), by inserting after  
8           “one-half of 1 percent” the following: “(or, in  
9           the case of the payment made for fiscal year  
10          2007, 1 percent)”; and

11          (B) in paragraph (2), by inserting after  
12          “one-tenth of 1 percent” the following: “(or, in  
13          the case of the payment made for fiscal year  
14          2007, one-half of 1 percent)”.

15          (4) REVISED CONDITIONS FOR RECEIPT OF  
16          FUNDS.—Section 253 of such Act (42 U.S.C.  
17          15403) is amended—

18          (A) in subsection (a), by striking “A State  
19          is eligible” and inserting “Except as provided in  
20          subsection (f), a State is eligible”; and

21          (B) by adding at the end the following new  
22          subsection:

23          “(f) SPECIAL RULE FOR FISCAL YEAR 2007.—Not-  
24          withstanding any other provision of this part, a State is

1 eligible to receive a requirements payment for fiscal year  
2 2007 if—

3           “(1) not later than 30 days after the date of  
4 the enactment of the Voter Confidence and In-  
5 creased Accessibility Act of 2007, the State certifies  
6 to the Commission the number of remedial precincts  
7 in the State (as defined in section 252(b)(2)(B));  
8 and

9           “(2) not later than 90 days after the date of  
10 the enactment of such Act, the chief executive officer  
11 of the State, or designee, in consultation and coordi-  
12 nation with the chief State election official, has filed  
13 a statement with the Commission describing the  
14 State’s need for the payment and how the State will  
15 use the payment to meet the requirements of title  
16 III (in accordance with the limitations applicable to  
17 the use of the payment under section 257(a)(4)).”.

18           (5) PERMITTING USE OF FUNDS FOR REIM-  
19 BURSEMENT FOR COSTS PREVIOUSLY INCURRED.—  
20 Section 251(e)(1) of such Act (42 U.S.C.  
21 15401(e)(1)) is amended by striking the period at  
22 the end and inserting the following: “, or as a reim-  
23 bursement for any costs incurred in meeting the re-  
24 quirements of title III which are imposed pursuant  
25 to the amendments made by section 2 of the Voter

1 Confidence and Increased Accessibility Act of 2007  
2 or in otherwise modifying or replacing voting sys-  
3 tems in response to such amendments.”.

4 (6) RULE OF CONSTRUCTION REGARDING  
5 STATES RECEIVING OTHER FUNDS FOR REPLACING  
6 PUNCH CARD, LEVER, OR OTHER VOTING MA-  
7 CHINES.—Nothing in the amendments made by this  
8 subsection or in any other provision of the Help  
9 America Vote Act of 2002 may be construed to pro-  
10 hibit a State which received or was authorized to re-  
11 ceive a payment under title I or II of such Act for  
12 replacing punch card, lever, or other voting ma-  
13 chines from receiving or using any funds which are  
14 made available under the amendments made by this  
15 subsection.

16 (7) EFFECTIVE DATE.—The amendments made  
17 by this subsection shall apply with respect to fiscal  
18 years beginning with fiscal year 2007.

19 **SEC. 3. ENHANCEMENT OF ENFORCEMENT OF HELP AMER-**  
20 **ICA VOTE ACT OF 2002.**

21 Section 401 of such Act (42 U.S.C. 15511) is amend-  
22 ed—

23 (1) by striking “The Attorney General” and in-  
24 serting “(a) IN GENERAL.—The Attorney General”;  
25 and

1           (2) by adding at the end the following new sub-  
2 sections:

3           “(b) FILING OF COMPLAINTS BY AGGRIEVED PER-  
4 SONS.—

5           “(1) IN GENERAL.—A person who is aggrieved  
6 by a violation of section 301, 302, or 303 which has  
7 occurred, is occurring, or is about to occur may file  
8 a written, signed, notarized complaint with the At-  
9 torney General describing the violation and request-  
10 ing the Attorney General to take appropriate action  
11 under this section.

12           “(2) RESPONSE BY ATTORNEY GENERAL.—The  
13 Attorney General shall respond to each complaint  
14 filed under paragraph (1), in accordance with proce-  
15 dures established by the Attorney General that re-  
16 quire responses and determinations to be made with-  
17 in the same (or shorter) deadlines which apply to a  
18 State under the State-based administrative com-  
19 plaint procedures described in section 402(a)(2).

20           “(c) CLARIFICATION OF AVAILABILITY OF PRIVATE  
21 RIGHT OF ACTION.—Nothing in this section may be con-  
22 strued to prohibit any person from bringing an action  
23 under section 1979 of the Revised Statutes of the United  
24 States (42 U.S.C. 1983) (including any individual who  
25 seeks to enforce the individual’s right to a voter-verified

1 paper ballot, the right to have the voter-verified paper bal-  
2 lot counted in an election, or any other right under subtitle  
3 A of title III) to enforce the uniform and nondiscrim-  
4 inatory election technology and administration require-  
5 ments under sections 301, 302, and 303.

6 “(d) NO EFFECT ON STATE PROCEDURES.—Nothing  
7 in this section may be construed to affect the availability  
8 of the State-based administrative complaint procedures re-  
9 quired under section 402 to any person filing a complaint  
10 under this subsection.”.

11 **SEC. 4. EXTENSION OF AUTHORIZATION OF ELECTION AS-**  
12 **SISTANCE COMMISSION.**

13 (a) IN GENERAL.—Section 210 of the Help America  
14 Vote Act of 2002 (42 U.S.C. 15330) is amended by strik-  
15 ing “each of the fiscal years 2003 through 2005” and in-  
16 serting “each fiscal year beginning with fiscal year 2003”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall take effect as if included in the enact-  
19 ment of the Help America Vote Act of 2002.

20 **SEC. 5. REQUIREMENT FOR MANDATORY MANUAL AUDITS**  
21 **BY HAND COUNT.**

22 (a) MANDATORY MANUAL AUDITS BY ELECTION  
23 AUDIT BOARDS.—Title III of the Help America Vote Act  
24 of 2002 (42 U.S.C. 15481 et seq.) is amended by adding  
25 at the end the following new subtitle:

1    **“Subtitle C—Mandatory Manual**  
2    **Audits by Election Audit Boards**

3    **“SEC. 321. ESTABLISHMENT OF ELECTION AUDIT BOARDS.**

4       “(a) ESTABLISHMENT.—Not later than 60 days be-  
5 fore the date of each election for Federal office held in  
6 the State, the chief auditor of each State shall appoint  
7 an Election Audit Board to administer, without advance  
8 notice to the precincts selected, random hand counts of  
9 the voter-verified paper ballots required to be produced  
10 and preserved pursuant to section 301(a)(2) for each such  
11 election held in the State (and, at the option of the State  
12 or jurisdiction involved, of elections for State and local of-  
13 fice held at the same time as such election).

14       “(b) COMPOSITION.—

15           “(1) IN GENERAL.—Each political party in the  
16 State with a candidate in any of the regularly sched-  
17 uled elections for Federal office held in the State  
18 whose candidates in the most recent regularly sched-  
19 uled general elections in the State received at least  
20 5% of the aggregate number of all votes cast in such  
21 elections, together with any independent candidate  
22 who received at least 5% of the aggregate number  
23 of all votes cast in the most recent regularly sched-  
24 uled general elections in the State, shall select a

1 qualified individual for appointment to the Election  
2 Audit Board of the State.

3 “(2) UNAFFILIATED MEMBERS.—In addition to  
4 the individuals serving on the Board pursuant to  
5 paragraph (1), the chief auditor of the State shall  
6 appoint qualified individuals who are not nominated  
7 by any political party or candidate and who are not  
8 employees or agents of any political party or can-  
9 didate to serve on the Board. The number of individ-  
10 uals appointed pursuant to this paragraph shall be  
11 sufficient to ensure that the total number of individ-  
12 uals serving on the Board is an odd number not less  
13 than 7.

14 “(3) QUALIFICATIONS.—An individual is quali-  
15 fied to be appointed to the Board if the individual  
16 has professional experience in carrying out audits on  
17 an impartial basis, and does not have any conflict of  
18 interest with the manufacturer or vendor of any vot-  
19 ing system which was used in any of the elections  
20 that will be audited by the Board.

21 “(4) DIVERSITY IN APPOINTMENTS.—In mak-  
22 ing appointments to the Board, the chief auditor of  
23 the State shall (to the greatest extent practicable)  
24 ensure that the members of the Board reflect the de-

1 demographic composition of the voting age population  
2 of the State.

3 “(c) SPECIAL RULE FOR RUNOFF AND SPECIAL  
4 ELECTIONS.—

5 “(1) RUNOFF ELECTIONS.—If a runoff election  
6 for Federal office is held in the State, the Election  
7 Audit Board which was appointed for the initial elec-  
8 tion which resulted in the runoff election shall serve  
9 as the Election Audit Board with respect to the run-  
10 off election.

11 “(2) SPECIAL ELECTIONS.—If a special election  
12 for Federal office is held in the State (other than a  
13 special election held on the same date as the date of  
14 a regularly scheduled election for Federal office), the  
15 Election Audit Board which was appointed for the  
16 most recent regularly scheduled election for Federal  
17 office in the State shall serve as the Election Audit  
18 Board with respect to the special election.

19 “(d) CHIEF AUDITOR DEFINED.—In this subsection,  
20 the ‘chief auditor’ of a State is an official of the State  
21 government, who, as designated by the Attorney General  
22 of the State and certified by the Attorney General of the  
23 State to the Commission, is responsible for conducting an-  
24 nual audits of the operations of the government of the  
25 State under the laws or constitution of the State, except

1 that in no case may an individual serve as the chief audi-  
2 tor of a State under this subsection if the individual is  
3 the chief State election official.

4 **“SEC. 322. NUMBER OF BALLOTS COUNTED UNDER AUDIT.**

5       “(a) IN GENERAL.—Except as provided in subsection  
6 (b), the number of voter-verified paper ballots which will  
7 be subject to a hand count administered by the Election  
8 Audit Board of a State under this subtitle with respect  
9 to an election shall be determined as follows:

10           “(1) In the event that the unofficial count as  
11 described in section 323(a)(1) reveals that the mar-  
12 gin of victory between the two candidates receiving  
13 the largest number of votes in the election is less  
14 than 1 percent of the total votes cast in that elec-  
15 tion, the hand counts of the voter-verified paper bal-  
16 lots shall occur in 10 percent of all precincts (or  
17 equivalent locations) in the Congressional district in-  
18 volved (in the case of an election for the House of  
19 Representatives) or the State (in the case of any  
20 other election for Federal office).

21           “(2) In the event that the unofficial count as  
22 described in section 323(a)(1) reveals that the mar-  
23 gin of victory between the two candidates receiving  
24 the largest number of votes in the election is greater  
25 than or equal to 1 percent but less than 2 percent

1 of the total votes cast in that election, the hand  
2 counts of the voter-verified paper ballots shall occur  
3 in 5 percent of all precincts (or equivalent locations)  
4 in the Congressional district involved (in the case of  
5 an election for the House of Representatives) or the  
6 State (in the case of any other election for Federal  
7 office).

8 “(3) In the event that the unofficial count as  
9 described in section 323(a)(1) reveals that the mar-  
10 gin of victory between the two candidates receiving  
11 the largest number of votes in the election is equal  
12 to or greater than 2 percent of the total votes cast  
13 in that election, the hand counts of the voter-verified  
14 paper ballots shall occur in 3 percent of all precincts  
15 (or equivalent locations) in the Congressional district  
16 involved (in the case of an election for the House of  
17 Representatives) or the State (in the case of any  
18 other election for Federal office).

19 “(b) USE OF ALTERNATIVE MECHANISM.—Notwith-  
20 standing subsection (a), a State may adopt and apply an  
21 alternative mechanism to determine the number of voter-  
22 verified paper ballots which will be subject to the hand  
23 counts required under this subtitle with respect to an elec-  
24 tion, so long as the National Institute of Standards and  
25 Technology determines that the alternative mechanism

1 will be at least as effective in ensuring the accuracy of  
2 the election results and as transparent as the procedure  
3 under subsection (a).

4 **“SEC. 323. PROCESS FOR ADMINISTERING AUDITS.**

5 “(a) IN GENERAL.—The Election Audit Board of a  
6 State shall administer an audit under this section of the  
7 results of an election in accordance with the following pro-  
8 cedures:

9 “(1) Within 24 hours after the State announces  
10 the final unofficial vote count in each precinct in the  
11 State, the Board shall determine and then announce  
12 the precincts in the State in which it will administer  
13 the audits.

14 “(2) With respect to votes cast at the precinct  
15 or equivalent location on or before the date of the  
16 election (other than provisional ballots described in  
17 paragraph (3)), the Board shall administer the hand  
18 count of the votes on the paper voter-verified ballots  
19 required to be produced and preserved under section  
20 301(a)(2)(A) and the comparison of the count of the  
21 votes on those ballots with the final unofficial count  
22 of such votes as announced by the State.

23 “(3) With respect to votes cast other than at  
24 the precinct on the date of the election (other than  
25 votes cast before the date of the election described

1 in paragraph (2)) or votes cast by provisional ballot  
2 on the date of the election which are certified and  
3 counted by the State on or after the date of the elec-  
4 tion, including votes cast by absent uniformed serv-  
5 ices voters and overseas voters under the Uniformed  
6 and Overseas Citizens Absentee Voting Act, the  
7 Board shall administer the hand count of the appli-  
8 cable voter-verified ballots required to be produced  
9 and preserved under section 301(a)(2)(A) and sec-  
10 tion 301(a)(2)(B) and compare the count it admin-  
11 isters with the count of such votes as announced by  
12 the State.

13 “(b) SPECIAL RULE IN CASE OF DELAY IN REPORT-  
14 ING ABSENTEE VOTE COUNT.—In the case of a State in  
15 which, under State law, the final count of absentee and  
16 provisional votes is not announced until after the expira-  
17 tion of the 7-day period which begins on the date of the  
18 election, the Election Audit Board shall initiate the proc-  
19 ess described in subsection (a) for administering the audit  
20 not later than 24 hours after the State announces the final  
21 unofficial vote count for the votes cast at the precinct or  
22 equivalent location on or before the date of the election,  
23 and shall initiate the administration of the audit of the  
24 absentee and provisional votes pursuant to subsection

1 (a)(3) not later than 24 hours after the State announces  
2 the final unofficial count of such votes.

3 “(e) ADDITIONAL AUDITS IF CAUSE SHOWN.—

4 “(1) IN GENERAL.—If the Election Audit  
5 Board finds that any of the hand counts adminis-  
6 tered under this section do not match the final unof-  
7 ficial tally of the results of an election, the Board  
8 shall administer hand counts under this section of  
9 such additional precincts (or equivalent jurisdictions)  
10 as the Board considers appropriate to resolve any  
11 concerns resulting from the audit and ensure the ac-  
12 curacy of the results.

13 “(2) ESTABLISHMENT AND PUBLICATION OF  
14 PROCEDURES GOVERNING ADDITIONAL AUDITS.—

15 Not later than January 1, 2008, each State shall es-  
16 tablish and publish procedures for carrying out the  
17 additional audits under this subsection, including the  
18 means by which the State shall resolve any concerns  
19 resulting from the audit with finality and ensure the  
20 accuracy of the results.

21 “(d) PUBLIC OBSERVATION OF AUDITS.—Each audit  
22 conducted under this section shall be conducted in a man-  
23 ner that allows public observation of the entire process.

1 **“SEC. 324. SELECTION OF PRECINCTS.**

2       “(a) IN GENERAL.—Except as provided in subsection  
3 (c), the selection of the precincts in the State in which  
4 the Election Audit Board of the State shall administer the  
5 hand counts under this subtitle shall be made by the  
6 Board on an entirely random basis using a uniform dis-  
7 tribution in which all precincts in a State have an equal  
8 chance of being selected, in accordance with such proce-  
9 dures as the Commission determines appropriate, except  
10 that—

11               “(1) at least one precinct shall be selected at  
12 random in each county; and

13               “(2) the Commission shall publish the proce-  
14 dures in the Federal Register prior to the selection  
15 of the precincts.

16       “(b) PUBLIC SELECTION.—The random selection of  
17 precincts under subsection (a) shall be conducted in pub-  
18 lic, at a time and place announced in advance.

19       “(c) MANDATORY SELECTION OF PRECINCTS ESTAB-  
20 LISHED SPECIFICALLY FOR ABSENTEE BALLOTS.—If a  
21 State establishes a separate precinct for purposes of  
22 counting the absentee ballots cast in an election and treats  
23 all absentee ballots as having been cast in that precinct,  
24 and if the state does not make absentee ballots sortable  
25 by precinct, the State shall include that precinct among  
26 the precincts in the State in which the Election Audit

1 Board shall administer the hand counts under this sub-  
2 title.

3 **“SEC. 325. PUBLICATION OF RESULTS.**

4       “(a) SUBMISSION TO COMMISSION.—As soon as prac-  
5 ticable after the completion of an audit under this subtitle,  
6 the Election Audit Board of a State shall submit to the  
7 Commission the results of the audit, and shall include in  
8 the submission a comparison of the results of the election  
9 in the precinct as determined by the Board under the  
10 audit and the final unofficial vote count in the precinct  
11 as announced by the State, as well as a list of any discrep-  
12 ancies discovered between the initial, subsequent, and final  
13 hand counts administered by the Board and such final un-  
14 official vote count and any explanation for such discrep-  
15 ancies, broken down by the categories of votes described  
16 in paragraphs (2) and (3) of section 323(a).

17       “(b) PUBLICATION BY COMMISSION.—Immediately  
18 after receiving the submission of the results of an audit  
19 from the Election Audit Board of a State under subsection  
20 (a), the Commission shall publicly announce and publish  
21 the information contained in the submission.

22       “(c) DELAY IN CERTIFICATION OF RESULTS BY  
23 STATE.—

24               “(1) PROHIBITING CERTIFICATION UNTIL COM-  
25 PLETION OF AUDITS.—No State may certify the re-

1       sults of any election which is subject to an audit  
2       under this subtitle prior to the completion of the  
3       audit and the announcement and submission of the  
4       results of the audit to the Commission for publica-  
5       tion of the information required under this section.

6           “(2) DEADLINE FOR COMPLETION OF AUDITS  
7       OF PRESIDENTIAL ELECTIONS.—In the case of an  
8       election for electors for President and Vice President  
9       which is subject to an audit under this subtitle, the  
10      State shall complete the audits and announce and  
11      submit the results to the Commission for publication  
12      of the information required under this section in  
13      time for the State to certify the results of the elec-  
14      tion and provide for the final determination of any  
15      controversy or contest concerning the appointment  
16      of such electors prior to the deadline described in  
17      section 6 of title 3, United States Code.

18   **“SEC. 326. PAYMENTS TO STATES.**

19           “(a) PAYMENTS FOR COSTS OF CONDUCTING AU-  
20      DITS.—In accordance with the requirements and proce-  
21      dures of this section, the Commission shall make a pay-  
22      ment to a State to cover the costs incurred by the State  
23      in carrying out this subtitle with respect to the elections  
24      that are the subject of the audits conducted under this  
25      subtitle.

1       “(b) CERTIFICATION OF COMPLIANCE AND ANTICI-  
2 PATED COSTS.—

3           “(1) CERTIFICATION REQUIRED.—In order to  
4 receive a payment under this section, a State shall  
5 submit to the Commission, in such form as the Com-  
6 mission may require, a statement containing—

7           “(A) a certification that the State will con-  
8 duct the audits required under this subtitle in  
9 accordance with all of the requirements of this  
10 subtitle;

11           “(B) a notice of the reasonable costs an-  
12 ticipated to be incurred by the State in carrying  
13 out this subtitle with respect to the elections in-  
14 volved; and

15           “(C) such other information and assur-  
16 ances as the Commission may require.

17           “(2) AMOUNT OF PAYMENT.—The amount of a  
18 payment made to a State under this section shall be  
19 equal to the reasonable costs anticipated to be in-  
20 curred by the State in carrying out this subtitle with  
21 respect to the elections involved, as set forth in the  
22 statement submitted under paragraph (1) a notice  
23 submitted by the State to the Commission (in such  
24 form and containing such information as the Com-  
25 mission may require).



1 **“SEC. 328. EFFECTIVE DATE.**

2 “This subtitle shall apply with respect to elections for  
3 Federal office beginning with the regularly scheduled gen-  
4 eral elections held in November 2008.”.

5 (b) AVAILABILITY OF ENFORCEMENT UNDER HELP  
6 AMERICA VOTE ACT OF 2002.—Section 401 of such Act  
7 (42 U.S.C. 15511), as amended by section 3, is amend-  
8 ed—

9 (1) in subsection (a), by striking the period at  
10 the end and inserting the following: “, or the re-  
11 quirements of subtitle C of title III.”;

12 (2) in subsection (b)(1), by striking “section  
13 303” and inserting “section 303, or subtitle C of  
14 title III,”; and

15 (3) in subsection (c)—

16 (A) by striking “subtitle A” and inserting  
17 “subtitles A or C”, and

18 (B) by striking the period at the end and  
19 inserting the following: “, or the requirements  
20 of subtitle C of title III.”.

21 (e) CLERICAL AMENDMENT.—The table of contents  
22 of such Act is amended by adding at the end of the item  
23 relating to title III the following:

“Subtitle C—Mandatory Manual Audits by Election Audit Boards

“Sec. 321. Establishment of Election Audit Boards.

“Sec. 322. Number of ballots counted under audit.

“Sec. 323. Process for administering audits.

“Sec. 324. Selection of precincts.

“Sec. 325. Publication of results.

“Sec. 326. Payments to States.

“Sec. 327. Exception for elections subject to automatic recount within 24 hours  
under State law.

“Sec. 328. Effective date.”.

1 **SEC. 6. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE**

2 **COMMISSION FROM CERTAIN GOVERNMENT**

3 **CONTRACTING REQUIREMENTS.**

4 (a) **IN GENERAL.**—Section 205 of the Help America  
5 Vote Act of 2002 (42 U.S.C. 15325) is amended by strik-  
6 ing subsection (e).

7 (b) **EFFECTIVE DATE.**—The amendment made by  
8 subsection (a) shall apply with respect to contracts entered  
9 into by the Election Assistance Commission on or after  
10 the date of the enactment of this Act.

11 **SEC. 7. EFFECTIVE DATE.**

12 Except as otherwise provided, this Act and the  
13 amendments made by this Act shall apply with respect to  
14 elections for Federal office occurring during 2008 and  
15 each succeeding year.

○

Ms. LOFGREN. Mr. Chairman I offer my substitute as an amendment.

The CHAIRMAN. Without objection, the first reading of the bill will be dispensed with and without objection, the bill will be considered as read and open to amendment at any point. Maybe before I recognize you, we should recess to go vote and come back and I will recognize you for your statement. Thank you all. We are recessed until after the vote. I think we have three votes on the floor.

[Recess.]

The CHAIRMAN. I would like to call the meeting of the Committee on House Administration back to order. The Chair now recognizes the gentlewoman from California. Ms. Lofgren, Chairwoman of the Subcommittee on Elections, held three hearings on this bill in preparation for today's markup.

Ms. LOFGREN. Mr. Chairman, I am chomping at the bit to offer my substitute to the amendment, and I do so at this time.

The CHAIRMAN. The amendment has been distributed to the Members. Without objection, the reading of the amendment will be dispensed with. The gentlelady from California is recognized for five minutes in support of her amendment.

[The information follows:]

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 811  
OFFERED BY MS. ZOE LOFGREN OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Voter Confidence and  
3 Increased Accessibility Act of 2007”.

4 **SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECURITY THROUGH VOTER-VERIFIED PERMANENT PAPER BALLOT.**

7 (a) **BALLOT VERIFICATION AND AUDIT CAPACITY.—**

8 (1) **IN GENERAL.—**Section 301(a)(2) of the  
9 Help America Vote Act of 2002 (42 U.S.C.  
10 15481(a)(2)) is amended to read as follows:

11 “(2) **BALLOT VERIFICATION AND AUDIT CAPACITY.—**  
12

13 “(A) **VOTER-VERIFIED PAPER BALLOTS.—**

14 “(i) **VERIFICATION.—(I)** The voting  
15 system shall require the use of or produce  
16 an individual, durable, voter-verified paper  
17 ballot of the voter’s vote that shall be cre-  
18 ated by or made available for inspection

1 and verification by the voter before the vot-  
2 er's vote is cast and counted. For purposes  
3 of this subclause, examples of such a ballot  
4 include a paper ballot marked by the voter  
5 for the purpose of being counted by hand  
6 or read by an optical scanner or other  
7 similar device, a paper ballot prepared by  
8 the voter to be mailed to an election offi-  
9 cial (whether from a domestic or overseas  
10 location), a paper ballot created through  
11 the use of a ballot marking device or sys-  
12 tem, or a paper ballot produced by a touch  
13 screen or other electronic voting machine,  
14 so long as in each case the voter is per-  
15 mitted to verify the ballot in a paper form  
16 in accordance with this subparagraph.

17 “(II) The voting system shall provide  
18 the voter with an opportunity to correct  
19 any error made by the system in the voter-  
20 verified paper ballot before the permanent  
21 voter-verified paper ballot is preserved in  
22 accordance with clause (ii).

23 “(III) The voting system shall not  
24 preserve the voter-verified paper ballots in  
25 any manner that makes it possible, at any

1 time after the ballot has been cast, to asso-  
2 ciate a voter with the record of the voter's  
3 vote.

4 “(ii) PRESERVATION.—The individual,  
5 durable voter-verified paper ballot pro-  
6 duced in accordance with clause (i) shall be  
7 used as the official ballot for purposes of  
8 any recount or audit conducted with re-  
9 spect to any election for Federal office in  
10 which the voting system is used, and shall  
11 be preserved—

12 “(I) in the case of votes cast at  
13 the polling place on the date of the  
14 election, within the polling place in  
15 the manner or method in which all  
16 other paper ballots are preserved  
17 within such polling place on such  
18 date; or

19 “(II) in any other case, in a  
20 manner which is consistent with the  
21 manner employed by the jurisdiction  
22 for preserving such ballots in general.

23 “(iii) MANUAL AUDIT CAPACITY.—(I)  
24 Each paper ballot produced pursuant to  
25 clause (i) shall be suitable for a manual

4

1           audit equivalent to that of a paper ballot  
2           voting system, and shall be counted by  
3           hand in any recount or audit conducted  
4           with respect to any election for Federal of-  
5           fice.

6                   “(II) In the event of any inconsist-  
7                   encies or irregularities between any elec-  
8                   tronic vote tallies and the vote tallies de-  
9                   termined by counting by hand the indi-  
10                  vidual, durable voter-verified paper ballots  
11                  produced pursuant to clause (i), and sub-  
12                  ject to subparagraph (B), the individual,  
13                  durable voter-verified paper ballots shall be  
14                  the true and correct record of the votes  
15                  cast.

16                   “(B) SPECIAL RULE FOR TREATMENT OF  
17                   DISPUTES WHEN PAPER BALLOTS HAVE BEEN  
18                   SHOWN TO BE COMPROMISED.—

19                   “(i) IN GENERAL.—In the event  
20                   that—

21                           “(I) there is any inconsistency  
22                           between any electronic vote tallies and  
23                           the vote tallies determined by count-  
24                           ing by hand the individual, durable  
25                           voter-verified paper ballots produced

5

1 pursuant to subparagraph (A)(i) with  
2 respect to any election for Federal of-  
3 fice; and

4 “(II) it is demonstrated by clear  
5 and convincing evidence (as deter-  
6 mined in accordance with the applica-  
7 ble standards in the jurisdiction in-  
8 volved) in any recount, audit, or con-  
9 test of the result of the election that  
10 the paper ballots have been com-  
11 promised (by damage or mischief or  
12 otherwise) and that a sufficient num-  
13 ber of the ballots have been so com-  
14 promised that the result of the elec-  
15 tion could be changed,

16 the determination of the appropriate rem-  
17 edy with respect to the election shall be  
18 made in accordance with applicable State  
19 law, except that the electronic tally shall  
20 not be used as the exclusive basis for de-  
21 termining the official certified vote tally.

22 “(ii) **RULE FOR CONSIDERATION OF**  
23 **BALLOTS ASSOCIATED WITH EACH VOTING**  
24 **MACHINE.**—For purposes of clause (i), the  
25 paper ballots associated with each voting

1 system shall be considered on a voting-ma-  
2 chine-by-voting-machine basis, and only the  
3 paper ballots deemed compromised, if any,  
4 shall be considered in the calculation of  
5 whether or not the result of the election  
6 could be changed due to the compromised  
7 paper ballots.”.

8 (2) CONFORMING AMENDMENT CLARIFYING AP-  
9 PPLICABILITY OF ALTERNATIVE LANGUAGE ACCESSI-  
10 BILITY.—Section 301(a)(4) of such Act (42 U.S.C.  
11 15481(a)(4)) is amended by inserting “(including  
12 the paper ballots required to be produced under  
13 paragraph (2) and the notices required under para-  
14 graphs (7) and (13)(B))” after “voting system”.

15 (3) OTHER CONFORMING AMENDMENTS.—Sec-  
16 tion 301(a)(1) of such Act (42 U.S.C. 15481(a)(1))  
17 is amended—

18 (A) in subparagraph (A)(i), by striking  
19 “counted” and inserting “counted, in accord-  
20 ance with paragraphs (2) and (3)”;

21 (B) in subparagraph (A)(ii), by striking  
22 “counted” and inserting “counted, in accord-  
23 ance with paragraphs (2) and (3)”;

24 (C) in subparagraph (A)(iii), by striking  
25 “counted” each place it appears and inserting

7

1 “counted, in accordance with paragraphs (2)  
2 and (3)”; and

3 (D) in subparagraph (B)(ii), by striking  
4 “counted” and inserting “counted, in accord-  
5 ance with paragraphs (2) and (3)”.

6 (b) ACCESSIBILITY AND BALLOT VERIFICATION FOR  
7 INDIVIDUALS WITH DISABILITIES.—

8 (1) IN GENERAL.—Section 301(a)(3)(B) of  
9 such Act (42 U.S.C. 15481(a)(3)(B)) is amended to  
10 read as follows:

11 “(B)(i) satisfy the requirement of subpara-  
12 graph (A) through the use of at least one voting  
13 system equipped for individuals with disabilities  
14 at each polling place; and

15 “(ii) meet the requirements of subpara-  
16 graph (A) and paragraph (2)(A) by using a sys-  
17 tem that—

18 “(I) allows the voter to privately and  
19 independently verify the individual, durable  
20 paper ballot through the conversion of the  
21 human-readable printed or marked vote se-  
22 lections into accessible form,

23 “(II) ensures that the entire process  
24 of ballot verification and vote casting is

1 equipped for individuals with disabilities,  
2 and

3 “(III) does not preclude the supple-  
4 mentary use of Braille or tactile ballots.”.

5 (2) SPECIFIC REQUIREMENT OF STUDY, TEST-  
6 ING, AND DEVELOPMENT OF ACCESSIBLE BALLOT  
7 VERIFICATION MECHANISMS.—

8 (A) STUDY AND REPORTING.—Subtitle C  
9 of title II of such Act (42 U.S.C. 15381 et seq.)  
10 is amended—

11 (i) by redesignating section 247 as  
12 section 248; and

13 (ii) by inserting after section 246 the  
14 following new section:

15 **“SEC. 247. STUDY AND REPORT ON ACCESSIBLE BALLOT**  
16 **VERIFICATION MECHANISMS.**

17 “(a) STUDY AND REPORT.—The Director of the Na-  
18 tional Institute of Standards and Technology shall study,  
19 test, and develop best practices to enhance the accessibility  
20 of ballot verification mechanisms for individuals with dis-  
21 abilities, for voters whose primary language is not English,  
22 and for voters with difficulties in literacy, including best  
23 practices for the mechanisms themselves and the processes  
24 through which the mechanisms are used. In carrying out  
25 this section, the Director shall specifically investigate ex-

1 isting and potential methods or devices, including non-  
2 electronic devices, that will assist such individuals and vot-  
3 ers in creating voter-verified paper ballots and presenting  
4 or transmitting the information printed or marked on such  
5 ballots back to such individuals and voters.

6 “(b) COORDINATION WITH GRANTS FOR TECH-  
7 NOLOGY IMPROVEMENTS.—The Director shall coordinate  
8 the activities carried out under subsection (a) with the re-  
9 search conducted under the grant program carried out by  
10 the Commission under section 271, to the extent that the  
11 Director and Commission determine necessary to provide  
12 for the advancement of accessible voting technology.

13 “(c) DEADLINE.—The Director shall complete the re-  
14 quirements of subsection (a) not later than December 31,  
15 2008.

16 “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to carry out subsection  
18 (a) \$3,000,000, to remain available until expended.”.

19 (B) CLERICAL AMENDMENT.—The table of  
20 contents of such Act is amended—

21 (i) by redesignating the item relating  
22 to section 247 as relating to section 248;  
23 and

24 (ii) by inserting after the item relating  
25 to section 246 the following new item:

“Sec. 247. Study and report on accessible voter verification mechanisms.”.

1           (3) CLARIFICATION OF ACCESSIBILITY STAND-  
2 ARDS UNDER VOLUNTARY VOTING SYSTEM GUID-  
3 ANCE.—In adopting any voluntary guidance under  
4 subtitle B of title III of the Help America Vote Act  
5 with respect to the accessibility of the paper ballot  
6 verification requirements for individuals with disabil-  
7 ities, the Election Assistance Commission shall in-  
8 clude and apply the same accessibility standards ap-  
9 plicable under the voluntary guidance adopted for  
10 accessible voting systems under such subtitle.

11       (c) ADDITIONAL VOTING SYSTEM REQUIREMENTS.—

12           (1) REQUIREMENTS DESCRIBED.—Section  
13 301(a) of such Act (42 U.S.C. 15481(a)) is amend-  
14 ed by adding at the end the following new para-  
15 graphs:

16           “(7) INSTRUCTION REMINDING VOTERS OF IM-  
17 PORTANCE OF VERIFYING PAPER BALLOT.—

18           “(A) IN GENERAL.—The appropriate elec-  
19 tion official at each polling place shall cause to  
20 be placed in a prominent location in the polling  
21 place which is clearly visible from the voting  
22 booths a notice, in large font print accessible to  
23 the visually impaired, advising voters that the  
24 paper ballots representing their votes shall serve  
25 as the vote of record in all audits and recounts

11

1 in elections for Federal office, and that they  
2 should not leave the voting booth until con-  
3 firming that such paper ballots accurately  
4 record their vote.

5 “(B) SYSTEMS FOR INDIVIDUALS WITH  
6 DISABILITIES.—All voting systems equipped for  
7 individuals with disabilities shall present or  
8 transmit in accessible form the statement re-  
9 ferred to in subparagraph (A), as well as an ex-  
10 planation of the verification process described  
11 in paragraph (3)(B)(ii).

12 “(8) PROHIBITING USE OF UNCERTIFIED ELEC-  
13 TION-DEDICATED VOTING SYSTEM TECHNOLOGIES;  
14 DISCLOSURE REQUIREMENTS.—

15 “(A) IN GENERAL.—A voting system used  
16 in an election for Federal office in a State may  
17 not at any time during the election contain or  
18 use any election-dedicated voting system tech-  
19 nology which has not been certified by the State  
20 for use in the election and which has not been  
21 deposited with an accredited laboratory de-  
22 scribed in section 231 to be held in escrow and  
23 disclosed in accordance with this section.

24 “(B) REQUIREMENT FOR AND RESTRIC-  
25 TIONS ON DISCLOSURE.—An accredited labora-

1 tory under section 231 with whom an election-  
2 dedicated voting system technology has been de-  
3 posited shall—

4 “(i) hold the technology in escrow;  
5 and

6 “(ii) disclose technology and informa-  
7 tion regarding the technology to another  
8 person if—

9 “(I) the person is a qualified per-  
10 son described in subparagraph (C)  
11 who has entered into a nondisclosure  
12 agreement with respect to the tech-  
13 nology which meets the requirements  
14 of subparagraph (D); or

15 “(II) the laboratory is required to  
16 disclose the technology to the person  
17 under State law, in accordance with  
18 the terms and conditions applicable  
19 under such law.

20 “(C) QUALIFIED PERSONS DESCRIBED.—  
21 With respect to the disclosure of election-dedi-  
22 cated voting system technology by a laboratory  
23 under subparagraph (B)(ii)(I), a ‘qualified per-  
24 son’ is any of the following:

## 13

1           “(i) A governmental entity with re-  
2           sponsibility for the administration of vot-  
3           ing and election-related matters for pur-  
4           poses of reviewing, analyzing, or reporting  
5           on the technology.

6           “(ii) A party to pre- or post-election  
7           litigation challenging the result of an elec-  
8           tion or the administration or use of the  
9           technology used in an election, including  
10          but not limited to election contests or chal-  
11          lenges to the certification of the tech-  
12          nology, or an expert for a party to such  
13          litigation, for purposes of reviewing or ana-  
14          lyzing the technology to support or oppose  
15          the litigation, and all parties to the litiga-  
16          tion shall have access to the technology for  
17          such purposes.

18          “(iii) A person not described in clause  
19          (i) or (ii) who reviews, analyzes, or reports  
20          on the technology solely for an academic,  
21          scientific, technological, or other investiga-  
22          tion or inquiry concerning the accuracy or  
23          integrity of the technology.

24          “(D) REQUIREMENTS FOR NONDISCLO-  
25          SURE AGREEMENTS.—A nondisclosure agree-

1 ment entered into with respect to an election-  
2 dedicated voting system technology meets the  
3 requirements of this subparagraph if the agree-  
4 ment—

5 “(i) is limited in scope to coverage of  
6 the technology disclosed under subpara-  
7 graph (B) and any trade secrets and intel-  
8 lectual property rights related thereto;

9 “(ii) does not prohibit a signatory  
10 from entering into other nondisclosure  
11 agreements to review other technologies  
12 under this paragraph;

13 “(iii) exempts from coverage any in-  
14 formation the signatory lawfully obtained  
15 from another source or any information in  
16 the public domain;

17 “(iv) remains in effect for not longer  
18 than the life of any trade secret or other  
19 intellectual property right related thereto;

20 “(v) prohibits the use of injunctions  
21 barring a signatory from carrying out any  
22 activity authorized under subparagraph  
23 (C), including injunctions limited to the  
24 period prior to a trial involving the tech-  
25 nology;

15

1 “(vi) is silent as to damages awarded  
2 for breach of the agreement, other than a  
3 reference to damages available under appli-  
4 cable law;

5 “(vii) allows disclosure of evidence of  
6 crime, including in response to a subpoena  
7 or warrant;

8 “(viii) allows the signatory to perform  
9 analyses on the technology (including by  
10 executing the technology), disclose reports  
11 and analyses that describe operational  
12 issues pertaining to the technology (includ-  
13 ing vulnerabilities to tampering, errors,  
14 risks associated with use, failures as a re-  
15 sult of use, and other problems), and de-  
16 scribe or explain why or how a voting sys-  
17 tem failed or otherwise did not perform as  
18 intended; and

19 “(ix) provides that the agreement  
20 shall be governed by the trade secret laws  
21 of the applicable State.

22 “(E) ELECTION-DEDICATED VOTING SYS-  
23 TEM TECHNOLOGY DEFINED.—For purposes of  
24 this paragraph, ‘election-dedicated voting sys-  
25 tem technology’ means ‘voting system software’

1 as defined under the 2005 voluntary voting sys-  
2 tem guidelines adopted by the Commission  
3 under section 222, but excludes ‘commercial-  
4 off-the-shelf’ software and hardware defined  
5 under those guidelines.

6 “(9) PROHIBITION OF USE OF WIRELESS COM-  
7 MUNICATIONS DEVICES IN VOTING SYSTEMS.—No  
8 voting system shall contain, use, or be accessible by  
9 any wireless, power-line, or concealed communication  
10 device, except that enclosed infrared communications  
11 devices which are certified for use in the voting sys-  
12 tem by the State and which cannot be used for any  
13 remote or wide area communications or used without  
14 the knowledge of poll workers shall be permitted.

15 “(10) PROHIBITING CONNECTION OF SYSTEM  
16 OR TRANSMISSION OF SYSTEM INFORMATION OVER  
17 THE INTERNET.—No component of any voting de-  
18 vice upon which ballots are programmed or votes are  
19 cast or tabulated shall be connected to the Internet  
20 at any time.

21 “(11) SECURITY STANDARDS FOR VOTING SYS-  
22 TEMS USED IN FEDERAL ELECTIONS.—

23 “(A) IN GENERAL.—No voting system may  
24 be used in an election for Federal office unless  
25 the manufacturer of such system and the elec-

1 tion officials using such system meet the appli-  
2 cable requirements described in subparagraph  
3 (B).

4 “(B) REQUIREMENTS DESCRIBED.—The  
5 requirements described in this subparagraph  
6 are as follows:

7 “(i) The manufacturer and the elec-  
8 tion officials shall document the secure  
9 chain of custody for the handling of all  
10 software, hardware, vote storage media,  
11 ballots, and voter-verified ballots used in  
12 connection with voting systems, and shall  
13 make the information available upon re-  
14 quest to the Commission.

15 “(ii) The manufacturer shall disclose  
16 to the Commission and to the appropriate  
17 election official any information required to  
18 be disclosed under paragraph (8).

19 “(iii) After the appropriate election  
20 official has certified the election-dedicated  
21 and other voting system software for use in  
22 an election, the manufacturer may not—

23 “(I) alter such software; or

18

1                   “(II) insert or use in the voting  
2                   system any software not certified by  
3                   the State for use in the election.

4                   “(iv) At the request of the Commis-  
5                   sion, the appropriate election official shall  
6                   submit information to the Commission re-  
7                   garding the State’s compliance with this  
8                   subparagraph.

9                   “(C) DEVELOPMENT AND PUBLICATION OF  
10                  BEST PRACTICES ON DOCUMENTATION OF SE-  
11                  CURE CHAIN OF CUSTODY.—Not later than Au-  
12                  gust 1, 2008, the Commission shall develop and  
13                  make publicly available best practices regarding  
14                  the requirement of subparagraph (B)(i).

15                  “(D) DISCLOSURE OF SECURE CHAIN OF  
16                  CUSTODY.—The Commission shall make infor-  
17                  mation provided to the Commission under sub-  
18                  paragraph (B)(i) available to any person upon  
19                  request.

20                  “(12) DURABILITY AND READABILITY REQUIRE-  
21                  MENTS FOR BALLOTS.—

22                  “(A) DURABILITY REQUIREMENTS FOR  
23                  PAPER BALLOTS.—

24                  “(i) IN GENERAL.—All voter-verified  
25                  paper ballots required to be used under

19

1 this Act (including the paper ballots used  
2 under paragraph (13)) shall be marked,  
3 printed, or recorded on durable paper.

4 “(ii) DEFINITION.— For purposes of  
5 this Act, paper is ‘durable’ if it is capable  
6 of withstanding multiple counts and re-  
7 counts by hand without compromising the  
8 fundamental integrity of the ballots, and  
9 capable of retaining the information  
10 marked, printed, or recorded on them for  
11 the full duration of a retention and preser-  
12 vation period of 22 months.

13 “(B) READABILITY REQUIREMENTS FOR  
14 MACHINE-MARKED OR PRINTED PAPER BAL-  
15 LOTS.—All voter-verified paper ballots com-  
16 pleted by the voter through the use of a mark-  
17 ing or printing device shall be clearly readable  
18 by the voter without assistance (other than eye-  
19 glasses or other personal vision enhancing de-  
20 vices) and by a scanner or other device  
21 equipped for individuals with disabilities.

22 “(13) USE OF PAPER BALLOTS IN CASE OF SYS-  
23 TEM OR EQUIPMENT FAILURE.—

24 “(A) IN GENERAL.—In the event of the  
25 failure of voting equipment at a polling place

1 that causes a delay, any individual who is wait-  
2 ing at the polling place to cast a ballot in an  
3 election for Federal office shall be provided with  
4 a paper ballot for the election and the supplies  
5 necessary to mark the ballot. Any paper ballot  
6 which is cast by an individual under this sub-  
7 paragraph shall be counted and otherwise treat-  
8 ed as a regular ballot in the final unofficial vote  
9 count and certified count and not as a provi-  
10 sional ballot, unless the individual casting the  
11 ballot otherwise would have been required to  
12 cast a provisional ballot if the voting equipment  
13 had not failed.

14 “(B) POSTING OF NOTICE.—The appro-  
15 priate election official shall ensure that at each  
16 polling place a notice is displayed prominently  
17 which describes the right of an individual under  
18 this paragraph to be provided with a paper bal-  
19 lot for voting in the election.

20 “(C) TRAINING OF ELECTION OFFI-  
21 CIALS.—The chief State election official shall  
22 ensure that election officials at polling places in  
23 the State are aware of the requirements of this  
24 paragraph, including the requirement to display  
25 a notice under subparagraph (B).”.

1           (2) REQUIRING LABORATORIES TO MEET  
2 STANDARDS PROHIBITING CONFLICTS OF INTEREST  
3 AS CONDITION OF ACCREDITATION FOR TESTING OF  
4 VOTING SYSTEM HARDWARE AND SOFTWARE.—

5           (A) IN GENERAL.—Section 231(b) of such  
6 Act (42 U.S.C. 15371(b)) is amended by add-  
7 ing at the end the following new paragraphs:

8           “(3) PROHIBITING CONFLICTS OF INTEREST;  
9 ENSURING AVAILABILITY OF RESULTS.—

10           “(A) IN GENERAL.—A laboratory may not  
11 be accredited by the Commission for purposes  
12 of this section unless—

13           “(i) the laboratory certifies that the  
14 only compensation it receives for the test-  
15 ing carried out in connection with the cer-  
16 tification, decertification, and recertifi-  
17 cation of the manufacturer’s voting system  
18 hardware and software is the payment  
19 made from the Testing Escrow Account  
20 under paragraph (4);

21           “(ii) the laboratory meets such stand-  
22 ards as the Commission shall establish  
23 (after notice and opportunity for public  
24 comment) to prevent the existence or ap-  
25 pearance of any conflict of interest in the

1 testing carried out by the laboratory under  
2 this section, including standards to ensure  
3 that the laboratory does not have a finan-  
4 cial interest in the manufacture, sale, and  
5 distribution of voting system hardware and  
6 software, and is sufficiently independent  
7 from other persons with such an interest;

8 “(iii) the laboratory certifies that it  
9 will permit an expert designated by the  
10 Commission to observe any testing the lab-  
11 oratory carries out under this section; and

12 “(iv) the laboratory, upon completion  
13 of any testing carried out under this sec-  
14 tion, discloses the test protocols, results,  
15 and all communication between the labora-  
16 tory and the manufacturer to the Commis-  
17 sion.

18 “(B) AVAILABILITY OF RESULTS.—Upon  
19 receipt of information under subparagraph (A),  
20 the Commission shall make the information  
21 available promptly to election officials and the  
22 public.

23 “(4) PROCEDURES FOR CONDUCTING TESTING;  
24 PAYMENT OF USER FEES FOR COMPENSATION OF  
25 ACCREDITED LABORATORIES.—

1           “(A) ESTABLISHMENT OF ESCROW AC-  
2           COUNT.—The Commission shall establish an es-  
3           crow account (to be known as the ‘Testing Es-  
4           crow Account’) for making payments to accredited  
5           laboratories for the costs of the testing car-  
6           ried out in connection with the certification, de-  
7           certification, and recertification of voting sys-  
8           tem hardware and software.

9           “(B) SCHEDULE OF FEES.—In consulta-  
10          tion with the accredited laboratories, the Com-  
11          mission shall establish and regularly update a  
12          schedule of fees for the testing carried out in  
13          connection with the certification, decertification,  
14          and recertification of voting system hardware  
15          and software, based on the reasonable costs ex-  
16          pected to be incurred by the accredited labora-  
17          tories in carrying out the testing for various  
18          types of hardware and software.

19          “(C) REQUESTS AND PAYMENTS BY MANU-  
20          FACTURERS.—A manufacturer of voting system  
21          hardware and software may not have the hard-  
22          ware or software tested by an accredited labora-  
23          tory under this section unless—

1           “(i) the manufacturer submits a de-  
2           tailed request for the testing to the Com-  
3           mission; and

4           “(ii) the manufacturer pays to the  
5           Commission, for deposit into the Testing  
6           Escrow Account established under sub-  
7           paragraph (A), the applicable fee under the  
8           schedule established and in effect under  
9           subparagraph (B).

10          “(D) SELECTION OF LABORATORY.—Upon  
11          receiving a request for testing and the payment  
12          from a manufacturer required under subpara-  
13          graph (C), the Commission shall select at ran-  
14          dom (to the greatest extent practicable), from  
15          all laboratories which are accredited under this  
16          section to carry out the specific testing re-  
17          quested by the manufacturer, an accredited lab-  
18          oratory to carry out the testing.

19          “(E) PAYMENTS TO LABORATORIES.—  
20          Upon receiving a certification from a laboratory  
21          selected to carry out testing pursuant to sub-  
22          paragraph (D) that the testing is completed,  
23          along with a copy of the results of the test as  
24          required under paragraph (3)(A)(iv), the Com-  
25          mission shall make a payment to the laboratory

1 from the Testing Escrow Account established  
2 under subparagraph (A) in an amount equal to  
3 the applicable fee paid by the manufacturer  
4 under subparagraph (C)(ii).

5 “(5) DISSEMINATION OF ADDITIONAL INFORMA-  
6 TION ON ACCREDITED LABORATORIES.—

7 “(A) INFORMATION ON TESTING.—Upon  
8 completion of the testing of a voting system  
9 under this section, the Commission shall  
10 promptly disseminate to the public the identi-  
11 fication of the laboratory which carried out the  
12 testing.

13 “(B) INFORMATION ON STATUS OF LAB-  
14 ORATORIES.—The Commission shall promptly  
15 notify Congress, the chief State election official  
16 of each State, and the public whenever—

17 “(i) the Commission revokes, termi-  
18 nates, or suspends the accreditation of a  
19 laboratory under this section;

20 “(ii) the Commission restores the ac-  
21 creditation of a laboratory under this sec-  
22 tion which has been revoked, terminated,  
23 or suspended; or

1                   “(iii) the Commission has credible evi-  
2                   dence of significant security failure at an  
3                   accredited laboratory.”.

4                   (B) CONFORMING AMENDMENTS.—Section  
5                   231 of such Act (42 U.S.C. 15371) is further  
6                   amended—

7                   (i) in subsection (a)(1), by striking  
8                   “testing, certification,” and all that follows  
9                   and inserting the following: “testing of vot-  
10                  ing system hardware and software by ac-  
11                  credited laboratories in connection with the  
12                  certification, decertification, and recertifi-  
13                  cation of the hardware and software for  
14                  purposes of this Act.”;

15                  (ii) in subsection (a)(2), by striking  
16                  “testing, certification,” and all that follows  
17                  and inserting the following: “testing of its  
18                  voting system hardware and software by  
19                  the laboratories accredited by the Commis-  
20                  sion under this section in connection with  
21                  certifying, decertifying, and recertifying  
22                  the hardware and software.”;

23                  (iii) in subsection (b)(1), by striking  
24                  “testing, certification, decertification, and

27

1           recertification” and inserting “testing”;  
2           and

3                   (iv) in subsection (d), by striking  
4           “testing, certification, decertification, and  
5           recertification” each place it appears and  
6           inserting “testing”.

7           (C) DEADLINE FOR ESTABLISHMENT OF  
8           STANDARDS, ESCROW ACCOUNT, AND SCHED-  
9           ULE OF FEES.—The Election Assistance Com-  
10          mission shall establish the standards described  
11          in section 231(b)(3) of the Help America Vote  
12          Act of 2002 and the Testing Escrow Account  
13          and schedule of fees described in section  
14          231(b)(4) of such Act (as added by subpara-  
15          graph (A)) not later than January 1, 2008.

16          (D) AUTHORIZATION OF APPROPRIA-  
17          TIONS.—There are authorized to be appro-  
18          priated to the Election Assistance Commission  
19          such sums as may be necessary to carry out the  
20          Commission’s duties under paragraphs (3) and  
21          (4) of section 231 of the Help America Vote  
22          Act of 2002 (as added by subparagraph (A)).

23          (3) SPECIAL CERTIFICATION OF BALLOT DURA-  
24          BILITY AND READABILITY REQUIREMENTS FOR

1 STATES NOT CURRENTLY USING DURABLE PAPER  
2 BALLOTS.—

3 (A) IN GENERAL.—If any of the voting  
4 systems used in a State for the regularly sched-  
5 uled 2006 general elections for Federal office  
6 did not require the use of or produce durable  
7 paper ballots, the State shall certify to the  
8 Election Assistance Commission not later than  
9 90 days after the date of the enactment of this  
10 Act that the State will be in compliance with  
11 the requirements of sections 301(a)(2),  
12 301(a)(12), and 301(b) of the Help America  
13 Vote of 2002, as added or amended by this sub-  
14 section, in accordance with the deadline estab-  
15 lished under this Act, and shall include in the  
16 certification the methods by which the State  
17 will meet the requirements.

18 (B) CERTIFICATIONS BY STATES THAT RE-  
19 QUIRE CHANGES TO STATE LAW.—In the case  
20 of a State that requires State legislation to  
21 carry out an activity covered by any certifi-  
22 cation submitted under this paragraph, the  
23 State shall be permitted to make the certifi-  
24 cation notwithstanding that the legislation has  
25 not been enacted at the time the certification is

1 submitted and such State shall submit an addi-  
 2 tional certification once such legislation is en-  
 3 acted.

4 (4) GRANTS FOR RESEARCH ON DEVELOPMENT  
 5 OF ELECTION-DEDICATED VOTING SYSTEM SOFT-  
 6 WARE.—

7 (A) IN GENERAL.—Subtitle D of title II of  
 8 the Help America Vote Act of 2002 (42 U.S.C.  
 9 15401 et seq.) is amended by adding at the end  
 10 the following new part:

11 **“PART 7—GRANTS FOR RESEARCH ON DEVELOP-**  
 12 **MENT OF ELECTION-DEDICATED VOTING**  
 13 **SYSTEM SOFTWARE**

14 **“SEC. 297. GRANTS FOR RESEARCH ON DEVELOPMENT OF**  
 15 **ELECTION-DEDICATED VOTING SYSTEM**  
 16 **SOFTWARE.**

17 “(a) IN GENERAL.—The Director of the National  
 18 Science Foundation (hereafter in this part referred to as  
 19 the ‘Director’) shall make grants to not fewer than 3 eligi-  
 20 ble entities to conduct research on the development of elec-  
 21 tion-dedicated voting system software.

22 “(b) ELIGIBILITY.—An entity is eligible to receive a  
 23 grant under this part if it submits to the Director (at such  
 24 time and in such form as the Director may require) an  
 25 application containing—

1           “(1) certifications regarding the benefits of op-  
 2           erating voting systems on election-dedicated software  
 3           which is easily understandable and which is written  
 4           exclusively for the purpose of conducting elections;

5           “(2) certifications that the entity will use the  
 6           funds provided under the grant to carry out research  
 7           on how to develop voting systems that run on elec-  
 8           tion-dedicated software and that will meet the appli-  
 9           cable requirements for voting systems under title III;  
 10          and

11          “(3) such other information and certifications  
 12          as the Director may require.

13          “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
 14          are authorized to be appropriated for grants under this  
 15          part \$1,500,000 for each of fiscal years 2007 and 2008,  
 16          to remain available until expended.”.

17                 (B) CLERICAL AMENDMENT.—The table of  
 18                 contents of such Act is amended by adding at  
 19                 the end of the items relating to subtitle D of  
 20                 title II the following:

“PART 7—GRANTS FOR RESEARCH ON DEVELOPMENT OF ELECTION-  
 DEDICATED VOTING SYSTEM SOFTWARE

“Sec. 297. Grants for research on development of election-dedicated voting sys-  
 tem software.”.

21                 (d) AVAILABILITY OF ADDITIONAL FUNDING TO EN-  
 22                 ABLE STATES TO MEET COSTS OF REVISED REQUIRE-  
 23                 MENTS.—

1           (1) EXTENSION OF REQUIREMENTS PAYMENTS  
2           FOR MEETING REVISED REQUIREMENTS.—Section  
3           257(a) of the Help America Vote Act of 2002 (42  
4           U.S.C. 15407(a) is amended by adding at the end  
5           the following new paragraph:

6           “(4) For fiscal year 2007, \$1,000,000,000, ex-  
7           cept that any funds provided under the authoriza-  
8           tion made by this paragraph shall be used by a  
9           State only to meet the requirements of title III  
10          which are first imposed on the State pursuant to the  
11          amendments made by section 2 of the Voter Con-  
12          fidence and Increased Accessibility Act of 2007, or  
13          to otherwise modify or replace its voting systems in  
14          response to such amendments.”.

15          (2) USE OF REVISED FORMULA FOR ALLOCA-  
16          TION OF FUNDS.—Section 252(b) of such Act (42  
17          U.S.C. 15402(b)) is amended to read as follows:

18          “(b) STATE ALLOCATION PERCENTAGE DEFINED.—

19                 “(1) IN GENERAL.—Except as provided in para-  
20                 graph (2), the ‘State allocation percentage’ for a  
21                 State is the amount (expressed as a percentage)  
22                 equal to the quotient of—

23                         “(A) the voting age population of the State  
24                         (as reported in the most recent decennial cen-  
25                         sus); and

1           “(B) the total voting age population of all  
2           States (as reported in the most recent decennial  
3           census).

4           “(2) SPECIAL RULE FOR PAYMENTS FOR FIS-  
5           CAL YEAR 2007.—

6           “(A) IN GENERAL.—In the case of the re-  
7           quirements payment made to a State for fiscal  
8           year 2007, the ‘State allocation percentage’ for  
9           a State is the amount (expressed as a percent-  
10          age) equal to the quotient of—

11           “(i) the sum of the number of non-  
12           compliant precincts in the State and 50%  
13           of the number of partially noncompliant  
14           precincts in the State; and

15           “(ii) the sum of the number of non-  
16           compliant precincts in all States and 50%  
17           of the number of partially noncompliant  
18           precincts in all States.

19           “(B) NONCOMPLIANT PRECINCT DE-  
20           FINED.—In this paragraph, a ‘noncompliant  
21           precinct’ means any precinct (or equivalent lo-  
22           cation) within a State for which the voting sys-  
23           tem used to administer the regularly scheduled  
24           general election for Federal office held in No-

1 vember 2006 did not meet either of the require-  
2 ments described in subparagraph (D).

3 “(C) PARTIALLY NONCOMPLIANT PRE-  
4 CINCT DEFINED.—In this paragraph, a ‘par-  
5 tially noncompliant precinct’ means any pre-  
6 cinct (or equivalent location) within a State for  
7 which the voting system used to administer the  
8 regularly scheduled general election for Federal  
9 office held in November 2006 met only one of  
10 the requirements described in subparagraph  
11 (D).

12 “(D) REQUIREMENTS DESCRIBED.—The  
13 requirements described in this subparagraph  
14 with respect to a voting system are as follows:

15 “(i) The primary voting system re-  
16 quired the use of or produced durable  
17 paper ballots (as described in section  
18 301(a)(12)(A)) for every vote cast.

19 “(ii) The voting system provided that  
20 the entire process of paper ballot  
21 verification was equipped for individuals  
22 with disabilities.”.

23 (3) INCREASE IN STATE MINIMUM SHARE OF  
24 PAYMENT.—Section 252(c) of such Act (42 U.S.C.  
25 15402(c)) is amended—

1 (A) in paragraph (1), by inserting after  
2 “one-half of 1 percent” the following: “(or, in  
3 the case of the payment made for fiscal year  
4 2007, 1 percent)”; and

5 (B) in paragraph (2), by inserting after  
6 “one-tenth of 1 percent” the following: “(or, in  
7 the case of the payment made for fiscal year  
8 2007, one-half of 1 percent)”.

9 (4) REVISED CONDITIONS FOR RECEIPT OF  
10 FUNDS.—Section 253 of such Act (42 U.S.C.  
11 15403) is amended—

12 (A) in subsection (a), by striking “A State  
13 is eligible” and inserting “Except as provided in  
14 subsection (f), a State is eligible”; and

15 (B) by adding at the end the following new  
16 subsection:

17 “(f) SPECIAL RULE FOR FISCAL YEAR 2007.—

18 “(1) IN GENERAL.—Notwithstanding any other  
19 provision of this part, a State is eligible to receive  
20 a requirements payment for fiscal year 2007 if, not  
21 later than 90 days after the date of the enactment  
22 of the Voter Confidence and Increased Accessibility  
23 Act of 2007, the chief executive officer of the State,  
24 or designee, in consultation and coordination with  
25 the chief State election official—

1           “(A) certifies to the Commission the num-  
2           ber of noncompliant and partially noncompliant  
3           precincts in the State (as defined in section  
4           252(b)(2)); and

5           “(B) files a statement with the Commis-  
6           sion describing the State’s need for the pay-  
7           ment and how the State will use the payment  
8           to meet the requirements of title III (in accord-  
9           ance with the limitations applicable to the use  
10          of the payment under section 257(a)(4)).

11          “(2) CERTIFICATIONS BY STATES THAT RE-  
12          QUIRE CHANGES TO STATE LAW.—In the case of a  
13          State that requires State legislation to carry out any  
14          activity covered by any certification submitted under  
15          this subsection, the State shall be permitted to make  
16          the certification notwithstanding that the legislation  
17          has not been enacted at the time the certification is  
18          submitted and such State shall submit an additional  
19          certification once such legislation is enacted.”.

20          (5) PERMITTING USE OF FUNDS FOR REIM-  
21          BURSEMENT FOR COSTS PREVIOUSLY INCURRED.—  
22          Section 251(c)(1) of such Act (42 U.S.C.  
23          15401(c)(1)) is amended by striking the period at  
24          the end and inserting the following: “, or as a reim-  
25          bursement for any costs incurred in meeting the re-

1        requirements of title III which are imposed pursuant  
2        to the amendments made by section 2 of the Voter  
3        Confidence and Increased Accessibility Act of 2007  
4        or in otherwise modifying or replacing voting sys-  
5        tems in response to such amendments.”.

6        (6) RULE OF CONSTRUCTION REGARDING  
7        STATES RECEIVING OTHER FUNDS FOR REPLACING  
8        PUNCH CARD, LEVER, OR OTHER VOTING MA-  
9        CHINES.—Nothing in the amendments made by this  
10       subsection or in any other provision of the Help  
11       America Vote Act of 2002 may be construed to pro-  
12       hibit a State which received or was authorized to re-  
13       ceive a payment under title I or II of such Act for  
14       replacing punch card, lever, or other voting ma-  
15       chines from receiving or using any funds which are  
16       made available under the amendments made by this  
17       subsection.

18       (7) EFFECTIVE DATE.—The amendments made  
19       by this subsection shall apply with respect to fiscal  
20       years beginning with fiscal year 2007.

21       (c) EFFECTIVE DATE FOR NEW REQUIREMENTS.—  
22       Section 301(d) of such Act (42 U.S.C. 15481(d)) is  
23       amended to read as follows:

24       “(d) EFFECTIVE DATE.—

1           “(1) IN GENERAL.—Except as provided in para-  
2 graph (2), each State and jurisdiction shall be re-  
3 quired to comply with the requirements of this sec-  
4 tion on and after January 1, 2006.

5           “(2) SPECIAL RULE FOR CERTAIN REQUIRE-  
6 MENTS.—

7           “(A) IN GENERAL.—Except as provided in  
8 subparagraph (B), the requirements of this sec-  
9 tion which are first imposed on a State and ju-  
10 risdiction pursuant to the amendments made by  
11 section 2 of the Voter Confidence and Increased  
12 Accessibility Act of 2007 shall apply with re-  
13 spect to the regularly scheduled general election  
14 for Federal office held in November 2008 and  
15 each succeeding election for Federal office.

16           “(B) DELAY FOR JURISDICTIONS USING  
17 CERTAIN PAPER BALLOT PRINTERS OR CERTAIN  
18 PAPER BALLOT-EQUIPPED ACCESSIBLE MA-  
19 CHINES IN 2006.—

20           “(i) DELAY.—In the case of a juris-  
21 diction described in clause (ii), subpara-  
22 graph (A) shall apply to the jurisdiction as  
23 if the reference in such subparagraph to  
24 ‘the regularly scheduled general election  
25 for Federal office held in November 2008

1 and each succeeding election for Federal  
2 office' were a reference to 'elections for  
3 Federal office occurring during 2010 and  
4 each succeeding year', but only with re-  
5 spect to the following requirements of this  
6 section:

7           “(I) Paragraph (3)(B)(ii)(I) and  
8           (II) of subsection (a) (relating to ac-  
9           cess to verification from the durable  
10           paper ballot).

11           “(II) Paragraph (12) of sub-  
12           section (a) (relating to durability and  
13           readability requirements for ballots).

14           “(ii) JURISDICTIONS DESCRIBED.—A  
15           jurisdiction described in this clause is—

16           “(I) a jurisdiction which used  
17           thermal reel-to-reel voter verified  
18           paper ballot printers attached to di-  
19           rect recording electronic voting ma-  
20           chines for the administration of the  
21           regularly scheduled general election  
22           for Federal office held in November  
23           2006 and which will continue to use  
24           such printers attached to such voting  
25           machines for the administration of

39

1 elections for Federal office held in  
2 2008; or

3 “(II) a jurisdiction which used  
4 voting machines which met the acces-  
5 sibility requirements of paragraph (3)  
6 of subsection (a) (as in effect with re-  
7 spect to such election) for the admin-  
8 istration of the regularly scheduled  
9 general election for Federal office held  
10 in November 2006 and which used or  
11 produced a paper ballot, and which  
12 will continue to use such voting ma-  
13 chines for the administration of elec-  
14 tions for Federal office held in  
15 2008.”.

16 **SEC. 3. ENHANCEMENT OF ENFORCEMENT OF HELP AMER-**  
17 **ICA VOTE ACT OF 2002.**

18 Section 401 of such Act (42 U.S.C. 15511) is amend-  
19 ed—

20 (1) by striking “The Attorney General” and in-  
21 serting “(a) IN GENERAL.—The Attorney General”;  
22 and

23 (2) by adding at the end the following new sub-  
24 sections:

1       “(b) FILING OF COMPLAINTS BY AGGRIEVED PER-  
2       SONS.—

3               “(1) IN GENERAL.—A person who is aggrieved  
4       by a violation of section 301, 302, or 303 which has  
5       occurred, is occurring, or is about to occur may file  
6       a written, signed, notarized complaint with the At-  
7       torney General describing the violation and request-  
8       ing the Attorney General to take appropriate action  
9       under this section.

10              “(2) RESPONSE BY ATTORNEY GENERAL.—The  
11       Attorney General shall respond to each complaint  
12       filed under paragraph (1), in accordance with proce-  
13       dures established by the Attorney General that re-  
14       quire responses and determinations to be made with-  
15       in the same (or shorter) deadlines which apply to a  
16       State under the State-based administrative com-  
17       plaint procedures described in section 402(a)(2).

18              “(c) CLARIFICATION OF AVAILABILITY OF PRIVATE  
19       RIGHT OF ACTION.—Nothing in this section may be con-  
20       strued to prohibit any person from bringing an action  
21       under section 1979 of the Revised Statutes of the United  
22       States (42 U.S.C. 1983) (including any individual who  
23       seeks to enforce the individual’s right to a voter-verified  
24       paper ballot, the right to have the voter-verified paper bal-  
25       lot counted in accordance with this Act, or any other right

1 under subtitle A of title III) to enforce the uniform and  
 2 nondiscriminatory election technology and administration  
 3 requirements under sections 301, 302, and 303.

4 “(d) NO EFFECT ON STATE PROCEDURES.—Nothing  
 5 in this section may be construed to affect the availability  
 6 of the State-based administrative complaint procedures re-  
 7 quired under section 402 to any person filing a complaint  
 8 under this subsection.”.

9 **SEC. 4. REQUIREMENT FOR MANDATORY MANUAL AUDITS**

10 **BY HAND COUNT.**

11 (a) MANDATORY MANUAL AUDITS.—Title III of the  
 12 Help America Vote Act of 2002 (42 U.S.C. 15481 et seq.)  
 13 is amended by adding at the end the following new sub-  
 14 title:

15 **“Subtitle C—Mandatory Manual**  
 16 **Audits**

17 **“SEC. 321. REQUIRING AUDITS OF RESULTS OF ELECTIONS.**

18 (a) REQUIRING AUDITS.—

19 “(1) IN GENERAL.—In accordance with this  
 20 subtitle, each State shall administer, without ad-  
 21 vance notice to the precincts selected, audits of the  
 22 results of elections for Federal office held in the  
 23 State (and, at the option of the State or jurisdiction  
 24 involved, of elections for State and local office held  
 25 at the same time as such election) consisting of ran-

1 dom hand counts of the voter-verified paper ballots  
2 required to be produced and preserved pursuant to  
3 section 301(a)(2).

4 “(2) EXCEPTION FOR CERTAIN ELECTIONS.—A  
5 State shall not be required to administer an audit of  
6 the results of an election for Federal office under  
7 this subtitle if the winning candidate in the elec-  
8 tion—

9 “(A) had no opposition on the ballot; or

10 “(B) received 80% or more of the total  
11 number of votes cast in the election, as deter-  
12 mined on the basis of the final unofficial vote  
13 count.

14 “(b) DETERMINATION OF ENTITY CONDUCTING AU-  
15 DITS; APPLICATION OF GAO INDEPENDENCE STAND-  
16 ARDS.—The State shall administer audits under this sub-  
17 title through an entity selected for such purpose by the  
18 State in accordance with such criteria as the State con-  
19 siders appropriate consistent with the requirements of this  
20 subtitle, except that the entity must meet the general  
21 standards established by the Comptroller General to en-  
22 sure the independence (including the organizational inde-  
23 pendence) of entities performing financial audits, attesta-  
24 tion engagements, and performance audits under generally  
25 accepted government accounting standards.

1       “(c) REFERENCES TO ELECTION AUDITOR.—In this  
2 subtitle, the term ‘Election Auditor’ means, with respect  
3 to a State, the entity selected by the State under sub-  
4 section (b).

5       **“SEC. 322. NUMBER OF BALLOTS COUNTED UNDER AUDIT.**

6       “(a) IN GENERAL.—Except as provided in subsection  
7 (b), the number of voter-verified paper ballots which will  
8 be subject to a hand count administered by the Election  
9 Auditor of a State under this subtitle with respect to an  
10 election shall be determined as follows:

11           “(1) In the event that the unofficial count as  
12 described in section 323(a)(1) reveals that the mar-  
13 gin of victory between the two candidates receiving  
14 the largest number of votes in the election is less  
15 than 1 percent of the total votes cast in that elec-  
16 tion, the hand counts of the voter-verified paper bal-  
17 lots shall occur in at least 10 percent of all precincts  
18 or equivalent locations (or alternative audit units  
19 used in accordance with the method provided for  
20 under subsection (b)) in the Congressional district  
21 involved (in the case of an election for the House of  
22 Representatives) or the State (in the case of any  
23 other election for Federal office).

24           “(2) In the event that the unofficial count as  
25 described in section 323(a)(1) reveals that the mar-

1       gin of victory between the two candidates receiving  
2       the largest number of votes in the election is greater  
3       than or equal to 1 percent but less than 2 percent  
4       of the total votes cast in that election, the hand  
5       counts of the voter-verified paper ballots shall occur  
6       in at least 5 percent of all precincts or equivalent lo-  
7       cations (or alternative audit units used in accord-  
8       ance with the method provided for under subsection  
9       (b)) in the Congressional district involved (in the  
10      case of an election for the House of Representatives)  
11      or the State (in the case of any other election for  
12      Federal office).

13       “(3) In the event that the unofficial count as  
14      described in section 323(a)(1) reveals that the mar-  
15      gin of victory between the two candidates receiving  
16      the largest number of votes in the election is equal  
17      to or greater than 2 percent of the total votes cast  
18      in that election, the hand counts of the voter-verified  
19      paper ballots shall occur in at least 3 percent of all  
20      precincts or equivalent locations (or alternative audit  
21      units used in accordance with the method provided  
22      for under subsection (b)) in the Congressional dis-  
23      trict involved (in the case of an election for the  
24      House of Representatives) or the State (in the case  
25      of any other election for Federal office).

1       “(b) USE OF ALTERNATIVE MECHANISM.—Notwith-  
2 standing subsection (a), a State may adopt and apply an  
3 alternative mechanism to determine the number of voter-  
4 verified paper ballots which will be subject to the hand  
5 counts required under this subtitle with respect to an elec-  
6 tion, so long as the alternative mechanism uses the voter-  
7 verified paper ballots to conduct the audit and the Na-  
8 tional Institute of Standards and Technology determines  
9 that the alternative mechanism will be at least as statis-  
10 tically effective in ensuring the accuracy of the election  
11 results as the procedure under this subtitle.

12 **“SEC. 323. PROCESS FOR ADMINISTERING AUDITS.**

13       “(a) IN GENERAL.—The Election Auditor of a State  
14 shall administer an audit under this section of the results  
15 of an election in accordance with the following procedures:

16           “(1) Within 24 hours after the State announces  
17 the final unofficial vote count (as defined by the  
18 State) in each precinct in the State, the Election  
19 Auditor shall determine and then announce the pre-  
20 cincts in the State in which it will administer the au-  
21 dits.

22           “(2) With respect to votes cast at the precinct  
23 or equivalent location on or before the date of the  
24 election (other than provisional ballots described in  
25 paragraph (3)), the Election Auditor shall admin-

1       ister the hand count of the votes on the voter-  
2       verified paper ballots required to be produced and  
3       preserved under section 301(a)(2)(A) and the com-  
4       parison of the count of the votes on those ballots  
5       with the final unofficial count of such votes as an-  
6       nounced by the State.

7           “(3) With respect to votes cast other than at  
8       the precinct on the date of the election (other than  
9       votes cast before the date of the election described  
10      in paragraph (2)) or votes cast by provisional ballot  
11      on the date of the election which are certified and  
12      counted by the State on or after the date of the elec-  
13      tion, including votes cast by absent uniformed serv-  
14      ices voters and overseas voters under the Uniformed  
15      and Overseas Citizens Absentee Voting Act, the  
16      Election Auditor shall administer the hand count of  
17      the votes on the applicable voter-verified paper bal-  
18      lots required to be produced and preserved under  
19      section 301(a)(2)(A) and the comparison of the  
20      count of the votes on those ballots with the final un-  
21      official count of such votes as announced by the  
22      State.

23           “(b) USE OF ELECTION PERSONNEL.—In admin-  
24      istering the audits, the Election Auditor may utilize the  
25      services of election administration personnel of the State

1 or jurisdiction, including poll workers, without regard to  
2 whether or not the personnel have professional auditing  
3 experience.

4 “(c) LOCATION.—The Election Auditor shall admin-  
5 ister an audit of an election at the location where the bal-  
6 lots cast in the election are stored and counted after the  
7 date of the election, and in the presence of those personnel  
8 who under State law are responsible for the custody of  
9 the ballots.

10 “(d) SPECIAL RULE IN CASE OF DELAY IN REPORT-  
11 ING ABSENTEE VOTE COUNT.—In the case of a State in  
12 which the final count of absentee and provisional votes is  
13 not announced until after the expiration of the 7-day pe-  
14 riod which begins on the date of the election, the Election  
15 Auditor shall initiate the process described in subsection  
16 (a) for administering the audit not later than 24 hours  
17 after the State announces the final unofficial vote count  
18 for the votes cast at the precinct or equivalent location  
19 on or before the date of the election, and shall initiate  
20 the administration of the audit of the absentee and provi-  
21 sional votes pursuant to subsection (a)(3) not later than  
22 24 hours after the State announces the final unofficial  
23 count of such votes.

24 “(e) ADDITIONAL AUDITS IF CAUSE SHOWN.—

1           “(1) IN GENERAL.—If the Election Auditor  
2 finds that any of the hand counts administered  
3 under this section do not match the final unofficial  
4 tally of the results of an election, the Election Audi-  
5 tor shall administer hand counts under this section  
6 of such additional precincts (or equivalent jurisdic-  
7 tions) as the Election Auditor considers appropriate  
8 to resolve any concerns resulting from the audit and  
9 ensure the accuracy of the results.

10           “(2) ESTABLISHMENT AND PUBLICATION OF  
11 PROCEDURES GOVERNING ADDITIONAL AUDITS.—  
12 Not later than August 1, 2008, each State shall es-  
13 tablish and publish procedures for carrying out the  
14 additional audits under this subsection, including the  
15 means by which the State shall resolve any concerns  
16 resulting from the audit with finality and ensure the  
17 accuracy of the results.

18           “(f) PUBLIC OBSERVATION OF AUDITS.—Each audit  
19 conducted under this section shall be conducted in a man-  
20 ner that allows public observation of the entire process.

21 **“SEC. 324. SELECTION OF PRECINCTS.**

22           “(a) IN GENERAL.—Except as provided in subsection  
23 (e), the selection of the precincts in the State in which  
24 the Election Auditor of the State shall administer the  
25 hand counts under this subtitle shall be made by the Elec-

tion Auditor on an entirely random basis using a uniform distribution in which all precincts in a Congressional district have an equal chance of being selected, in accordance with procedures adopted by the Commission, except that at least one precinct shall be selected at random in each county.

“(b) PUBLIC SELECTION.—The random selection of precincts under subsection (a) shall be conducted in public, at a time and place announced in advance.

“(c) MANDATORY SELECTION OF PRECINCTS ESTABLISHED SPECIFICALLY FOR ABSENTEE BALLOTS.—If a State establishes a separate precinct for purposes of counting the absentee ballots cast in an election and treats all absentee ballots as having been cast in that precinct, and if the state does not make absentee ballots sortable by precinct and include those ballots in the hand count administered with respect to that precinct, the State shall include that precinct among the precincts in the State in which the Election Auditor shall administer the hand counts under this subtitle.

“(d) DEADLINE FOR ADOPTION OF PROCEDURES BY COMMISSION.—The Commission shall adopt the procedures described in subsection (a) not later than March 31, 2008, and shall publish them in the Federal Register upon adoption.

1 **“SEC. 325. PUBLICATION OF RESULTS.**

2       “(a) SUBMISSION TO COMMISSION.—As soon as prac-  
3 ticable after the completion of an audit under this subtitle,  
4 the Election Auditor of a State shall submit to the Com-  
5 mission the results of the audit, and shall include in the  
6 submission a comparison of the results of the election in  
7 the precinct as determined by the Election Auditor under  
8 the audit and the final unofficial vote count in the precinct  
9 as announced by the State and all undervotes, overvotes,  
10 blank ballots, and spoiled, voided or cancelled ballots, as  
11 well as a list of any discrepancies discovered between the  
12 initial, subsequent, and final hand counts administered by  
13 the Election Auditor and such final unofficial vote count  
14 and any explanation for such discrepancies, broken down  
15 by the categories of votes described in paragraphs (2) and  
16 (3) of section 323(a).

17       “(b) PUBLICATION BY COMMISSION.—Immediately  
18 after receiving the submission of the results of an audit  
19 from the Election Auditor of a State under subsection (a),  
20 the Commission shall publicly announce and publish the  
21 information contained in the submission.

22       “(c) DELAY IN CERTIFICATION OF RESULTS BY  
23 STATE.—

24               “(1) PROHIBITING CERTIFICATION UNTIL COM-  
25 PLETION OF AUDITS.—No State may certify the re-

1 sults of any election which is subject to an audit  
2 under this subtitle prior to—

3 “(A) to the completion of the audit (and,  
4 if required, any additional audit conducted  
5 under section 323(d)(1)) and the announcement  
6 and submission of the results of each such audit  
7 to the Commission for publication of the infor-  
8 mation required under this section; and

9 “(B) the completion of any procedure es-  
10 tablished by the State pursuant to section  
11 323(d)(2) to resolve discrepancies and ensure  
12 the accuracy of results.

13 “(2) DEADLINE FOR COMPLETION OF AUDITS  
14 OF PRESIDENTIAL ELECTIONS.—In the case of an  
15 election for electors for President and Vice President  
16 which is subject to an audit under this subtitle, the  
17 State shall complete the audits and announce and  
18 submit the results to the Commission for publication  
19 of the information required under this section in  
20 time for the State to certify the results of the elec-  
21 tion and provide for the final determination of any  
22 controversy or contest concerning the appointment  
23 of such electors prior to the deadline described in  
24 section 6 of title 3, United States Code.

1 **“SEC. 326. PAYMENTS TO STATES.**

2       “(a) PAYMENTS FOR COSTS OF CONDUCTING AU-  
3 DITS.—In accordance with the requirements and proce-  
4 dures of this section, the Commission shall make a pay-  
5 ment to a State to cover the costs incurred by the State  
6 in carrying out this subtitle with respect to the elections  
7 that are the subject of the audits conducted under this  
8 subtitle.

9       “(b) CERTIFICATION OF COMPLIANCE AND ANTICI-  
10 PATED COSTS.—

11           “(1) CERTIFICATION REQUIRED.—In order to  
12 receive a payment under this section, a State shall  
13 submit to the Commission, in such form as the Com-  
14 mission may require, a statement containing—

15               “(A) a certification that the State will con-  
16 duct the audits required under this subtitle in  
17 accordance with all of the requirements of this  
18 subtitle;

19               “(B) a notice of the reasonable costs in-  
20 curred or the reasonable costs anticipated to be  
21 incurred by the State in carrying out this sub-  
22 title with respect to the elections involved; and

23               “(C) such other information and assur-  
24 ances as the Commission may require.

25           “(2) AMOUNT OF PAYMENT.—The amount of a  
26 payment made to a State under this section shall be

1 equal to the reasonable costs incurred or the reason-  
2 able costs anticipated to be incurred by the State in  
3 carrying out this subtitle with respect to the elec-  
4 tions involved, as set forth in the statement sub-  
5 mitted under paragraph (1).

6 “(3) TIMING OF NOTICE.—The State may not  
7 submit a notice under paragraph (1) until can-  
8 didates have been selected to appear on the ballot  
9 for all of the elections for Federal office which will  
10 be the subject of the audits involved.

11 “(c) TIMING OF PAYMENTS.—The Commission shall  
12 make the payment required under this section to a State  
13 not later than 30 days after receiving the notice submitted  
14 by the State under subsection (b).

15 “(d) RECOUPMENT OF OVERPAYMENTS.—No pay-  
16 ment may be made to a State under this section unless  
17 the State agrees to repay to the Commission the excess  
18 (if any) of—

19 “(1) the amount of the payment received by the  
20 State under this section with respect to the elections  
21 involved; over

22 “(2) the actual costs incurred by the State in  
23 carrying out this subtitle with respect to the elec-  
24 tions involved.

1       “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to the Commission for  
3 fiscal year 2008 and each succeeding fiscal year  
4 \$100,000,000 for payments under this section.

5       **“SEC. 327. EXCEPTION FOR ELECTIONS SUBJECT TO RE-**  
6                   **COUNT UNDER STATE LAW PRIOR TO CER-**  
7                   **TIFICATION.**

8       “(a) EXCEPTION.—This subtitle does not apply to  
9 any election for which a recount under State law will com-  
10 mence prior to the certification of the results of the elec-  
11 tion, including but not limited to a recount required auto-  
12 matically because of the margin of victory between the two  
13 candidates receiving the largest number of votes in the  
14 election, but only if each of the following applies to the  
15 recount:

16           “(1) The recount commences prior to the deter-  
17 mination and announcement by the Election Auditor  
18 under section 323(a)(1) of the precincts in the State  
19 in which it will administer the audits under this sub-  
20 title.

21           “(2) If the recount would apply to fewer than  
22 100% of the ballots cast in the election—

23                   “(A) the number of ballots counted will be  
24 at least as many as would be counted if an

1           audit were conducted with respect to the elec-  
2           tion in accordance with this subtitle; and

3                   “(B) the selection of the precincts in which  
4           the recount will be conducted will be made in  
5           accordance with the random selection proce-  
6           dures applicable under section 324.

7                   “(3) The recount for the election meets the re-  
8           quirements of section 323(e) (relating to public ob-  
9           servation).

10                   “(4) The State meets the requirements of sec-  
11           tion 325 (relating to the publication of results and  
12           the delay in the certification of results) with respect  
13           to the recount.

14                   “(b) CLARIFICATION OF EFFECT ON OTHER RE-  
15           QUIREMENTS.— Nothing in this section may be construed  
16           to waive the application of any other provision of this Act  
17           to any election (including the requirement set forth in sec-  
18           tion 301(a)(2) that the voter verified paper ballots serve  
19           as the vote of record and shall be counted by hand in all  
20           audits and recounts, including audits and recounts de-  
21           scribed in this subtitle).

22           **“SEC. 328. EFFECTIVE DATE.**

23                   ““This subtitle shall apply with respect to elections for  
24           Federal office beginning with the regularly scheduled gen-  
25           eral elections held in November 2008.”.

1 (b) AVAILABILITY OF ENFORCEMENT UNDER HELP  
2 AMERICA VOTE ACT OF 2002.—Section 401 of such Act  
3 (42 U.S.C. 15511), as amended by section 3, is amend-  
4 ed—

5 (1) in subsection (a), by striking the period at  
6 the end and inserting the following: “, or the re-  
7 quirements of subtitle C of title III.”;

8 (2) in subsection (b)(1), by striking “section  
9 303” and inserting “section 303, or subtitle C of  
10 title III.”; and

11 (3) in subsection (c)—

12 (A) by striking “subtitle A” and inserting  
13 “subtitles A or C”, and

14 (B) by striking the period at the end and  
15 inserting the following: “, or the requirements  
16 of subtitle C of title III.”.

17 (c) GUIDANCE ON BEST PRACTICES FOR ALTER-  
18 NATIVE AUDIT MECHANISMS.—

19 (1) IN GENERAL.—Not later than May 1, 2008,  
20 the Director of the National Institute for Standards  
21 and Technology shall establish guidance for States  
22 that wish to establish alternative audit mechanisms  
23 under section 322(b) of the Help America Vote Act  
24 of 2002 (as added by subsection (a)). Such guidance  
25 shall be based upon scientifically and statistically

1 reasonable assumptions for the purpose of creating  
 2 an alternative audit mechanism that will be at least  
 3 as effective in ensuring the accuracy of election re-  
 4 sults and as transparent as the procedure under  
 5 subtitle C of title III of such Act (as so added).

6 (2) **AUTHORIZATION OF APPROPRIATIONS.**—  
 7 There are authorized to be appropriated to carry out  
 8 paragraph (1) \$100,000, to remain available until  
 9 expended.

10 (d) **CLERICAL AMENDMENT.**—The table of contents  
 11 of such Act is amended by adding at the end of the item  
 12 relating to title III the following:

“Subtitle C—Mandatory Manual Audits

“Sec. 321. Requiring audits of results of elections.

“Sec. 322. Number of ballots counted under audit.

“Sec. 323. Process for administering audits.

“Sec. 324. Selection of precincts.

“Sec. 325. Publication of results.

“Sec. 326. Payments to States.

“Sec. 327. Exception for elections subject to recount under State law prior to certification.

“Sec. 328. Effective date.”.

13 **SEC. 5. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE**  
 14 **COMMISSION FROM CERTAIN GOVERNMENT**  
 15 **CONTRACTING REQUIREMENTS.**

16 (a) **IN GENERAL.**—Section 205 of the Help America  
 17 Vote Act of 2002 (42 U.S.C. 15325) is amended by strik-  
 18 ing subsection (e).

19 (b) **EFFECTIVE DATE.**—The amendment made by  
 20 subsection (a) shall apply with respect to contracts entered

1 into by the Election Assistance Commission on or after  
2 the date of the enactment of this Act.

3 **SEC. 6. EFFECTIVE DATE.**

4 Except as otherwise provided, this Act and the  
5 amendments made by this Act shall apply with respect to  
6 the regularly scheduled general election for Federal office  
7 in November 2008 and each succeeding election for Fed-  
8 eral office.

Ms. LOFGREN. My amendment is an attempt to meet the concerns or many of the concerns that were raised by various parties during the hearings and subsequent to them.

There is no systematic auditing in place to catch the problems in Federal elections. The substitute language modifies the audit section by allowing States to create their own audit entity which is independent and nonpartisan. It also allows State and locals to choose to use the tiered audit formula outlined in the bill or to develop an audit that is deemed statistically equivalent by NIST.

We have also clarified language, providing definitions for terms such as durable paper and language explaining that clearly readable by a voter now includes a reference to eye glasses or corrective lenses, a suggestion made by the minority. This is language actually in their amendment.

Recognizing that the software issue has been a key concern for many who vote, the tech sector and the media, we have also modified the disclosure and security requirements to make them more practicable, and I will say that in extensive meetings with the software community, and specifically the business software alliance, I am advised that the business software alliance does not oppose the language that we have in this substitute.

Their concerns about protecting intellectual property rights of voting systems and the like, we have modified the disclosure language to recognize these rights, while at the same time, allowing parties to litigation and experts access to information necessary to ensure the integrity of the voting system. The substitute also recognizes the need for more time, but balances the concerns of voters by providing waivers for some State and locals to move to paper ballots.

All paper-based systems including thermal reel to reel systems and accessible systems that used or produced a paper ballot in 2006 can be used until 2010 and the waiver for thermal reel to reel is the new addition to the bill, since last week as a result of us having time to read the minority amendments.

Only six States will be required to replace all voting machines by 2008. Those States would be Delaware, Georgia, Louisiana, Maryland, South Carolina, and Tennessee. A total of only 13 States will be required to place some of their voting machines by 2008. The time factor is also the reason we have made provisions to allow for States with legislatures that don't meet every year. We recognize that these changes are not going to be inexpensive. The substitute also includes the authorization of \$1 billion and a formula to the allocation of these funds.

We believe that this substitute deals with all of the issues that can be dealt with. I will note, I know that Mr. Ehlers will be offering a substitute to the substitute with the timeline that is not aggressive enough. A 2014 deadline delaying the implementation beyond 2008 will just cause further problems and distrust, and we also cannot place NIST in a position to set standards that are impossible. The Association For Computing Machinery, having reviewed the minority substitute, believes their amendment has some impractical computer security provisions as well.

So in short, I think the substitute deals with the issues that can be dealt with. It has dealt with the technology issues, which is why

the business software alliance does not oppose it. And I believe it will restore integrity to our voting systems and also confidence in our electoral process. So with that, Mr. Chairman, I move to yield back.

The CHAIRMAN. I thank the gentlelady. I recognize Mr. Ehlers, the Ranking Member.

Mr. EHLERS. Thank you, Mr. Chairman.

I appreciate that.

The gentlewoman commented that her substitute deals with all the questions that can be dealt with. My question is: Do they deal with all the questions raised by election officials as contained by this stack of letters that we have?

Ms. LOFGREN. If I may, and you can see I am about out the door because I have a roomful of people waiting for me and I will be back to the markup—I think—in answer, if the gentleman will yield—some of the issues cannot be dealt with because they are offered by people who do not want change. I believe that the country wants change. And so we have dealt with those issues that can be dealt with while still proceeding with change for those who do not want change, we are saying we are sorry, but the country needs change and I yield back.

Mr. EHLERS. Reclaiming my time. I don't think we need change for the sake of change, but we certainly need improvement. I am willing to support and vote for improvement. What I see in this substitute is not improvement but more problems, more difficulties, and more than we have had in HAVA so far. I am very concerned about that. I would be happy to sit down with the majority and try to hammer out an agreement. That hasn't occurred. It has all been just take it or leave it, and so we will be offering amendments. We will offer a different substitute.

Let me just say, I am concerned about the workability. Certainly, we cannot meet the 2008 deadline. That is clear in all the communications we have had from State and local people. Given that, then, how can we improve the bill?

Let me just ask a few questions. States like Maryland and Georgia—I don't know who is going to answer this since the sponsor has left. But States like Maryland and Georgia have to acquire a paper-based system under this bill because they use paperless DREs as primary and accessible voting machines. What voting systems could these States get that allows a blind person to verify their vote? I don't know if there is an answer from anyone on the minority side or not. In HAVA, we worked very hard—

Mr. LUNGREN. Majority side.

Mr. EHLERS. I am sorry. I wish you wouldn't keep reminding me of that.

The CHAIRMAN. I noticed one of your own reminded you. We know where we are at, and we are still trying to handle it.

Mr. EHLERS. I am afraid you do. Anyone have any response to that question?

Another question, does this bill outlaw lever systems, the old stand-by voting machines, which, incidentally, were instituted to get rid of the corruption that was endemic with paper ballots.

Apparently no answer is available.

Another question, what voting systems currently exist for purchase that meet the requirements in the bill?

The CHAIRMAN. With all due respect, the lady that held the hearings isn't here at the moment to answer the question. She held the hearings and I am sure she has the answers to them and when she comes back we will have her address them.

Mr. EHLERS. In that case, I will yield back and ask my colleagues.

The CHAIRMAN. Did you offer a substitute? I don't know whether you offered it or you just had a comment.

Mr. EHLERS. I have a substitute to offer which is a substitute to their substitute.

The CHAIRMAN. She offered the substitute and without objection, the substitute amendment is considered as read and you are recognized now. I would like to recognize Mr. Lungren from California.

Mr. LUNGREN. Thank you very much, Mr. Chairman. This is an interesting moment for me. I was not here when HAVA was passed, but I recall watching with interest the actions of the Congress at that time, and with all due respect, much of what the gentlelady from California said we are about to do now and why we have to do it now, is reminiscent of what was said when we passed HAVA just a few years ago, and the machines we are now concerned about are the machines that were purchased pursuant to HAVA, and now we are coming up again with our solution.

And I would reject the notion that the election officials who have complained about the contours of this bill in terms of its impracticality and in terms of its uncertainty are all those who don't wish to make any change. I have here a letter from the American Association of People With Disabilities, the largest cross disability membership organization in the country. They support voting systems that are accessible, secure, accurate and recountable. These are their words. But in order for them to support this bill, they say it would require delaying the implementation date until 2014. They are doing this because they say the 2014 implementation date is realistic based on the experience of voting equipment manufacturers and election officials.

That is not a group that is against change. It is a group that is against a version of a bill will make it impossible to succeed. The election officials in California have sent a letter talking about the impracticality of this approach. The letter that we received on April 25th from Karen Kean, the legislative, excuse me from Stephen Weir, the President of the California Association of Clerks and Elected Officials, expresses the concerns that they have.

I have letters from individual election officers in counties from my State. They are not opposed to changes that would make it effective, but they are very concerned about this bill that we have.

And so I hope that we are just not going to accept at face value that anybody who is opposed to the version of the bill that has been presented to us or the substitute presented to us by the gentlelady from California are against change or against ensuring that we have access to our polling places, that we have the ability for people to vote and not be confused about how they vote and the ability for us to ensure the integrity of the system.

I appreciate the fact that my friend, the gentlelady from California, had to leave but it makes it very difficult for us to ask questions about the version that has just been presented to us so that we can not only talk about the general outlines of this, but so we can ask specific questions that would govern our introduction of several amendments to deal with the issues that we find as we read this bill.

In short, Mr. Chairman, I am concerned about the Federal Government now telling the States that they have screwed up based on what we told them to do just a couple of years ago. The HAVA bill, as I understand it, authorized \$3.2 billion to assist the States in this. And ultimately, the Congress got around to giving them \$800 million. Now we are telling them trust us, we are going to give you a billion dollars to do this in the time limits that we have. And I think it is certainly realistic for them to have some concerns about this.

So, Mr. Chairman, I hope we will have ample time for debate on the substance of what is before us and also on the amendments that we have drawn hopefully to the substitute that is here and take into concern the very specific questions we have about the bill as it has been presented to us. And I thank the chairman for the time.

[The information follows:]

FROM :

FAX NO. :

Apr. 26 2007 12:45PM P1



April 26, 2007

The Honorable Vernon Ehlers  
2182 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Ehlers:

The American Association of People with Disabilities (AAPD) is the nation's largest cross-disability membership organization. Our mission is to increase the political and economic power of the more than 50 million children and adults living with disabilities in the United States.

AAPD opposes passage of H.R. 811  *Voter Confidence and Increase Accessibility Act* in its current form. This bill, as written, does not adhere to the *Help America Vote Act of 2002* (HAVA) requirement that voting systems be accessible to voters with disabilities "in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters."

AAPD supports voting systems that are accessible, secure, accurate and recountable. In order for AAPD to support H.R. 811, it would require delaying the implementation date to 2014 and appropriating at least \$1 billion for research, development, testing and purchasing of accessible paper-based voting systems. A 2014 implementation date is realistic based on the experience of voting equipment manufacturers and election officials. It takes years to develop new system standards and test protocols, design and beta test equipment, certify and purchase equipment, and train election officials and poll workers.

H.R. 811 as written would amend HAVA by making a number of major changes to the nation's election systems. It requires all changes to be in place for the primaries in next year's presidential election. If enacted into law, H.R. 811 will require that all polling places use equipment in the 2008 presidential race that can produce an accessible, voter-verifiable paper ballot. When this bill's paper ballot requirement is coupled with the access requirements of HAVA, it will require election officials to purchase technology that does not currently exist.

Reliable estimates to develop, deploy and certify this technology range from five to ten years. In addition, H.R. 811 requires the federal government to study how best to make its voter-verifiable paper ballot accessible to voters with a wide range of disabilities, and

1629 K Street NW, Suite 503 · Washington, DC 20006  
phone 202-457-0046 (V/TTY) 800-840-8844 (V/TTY) fax 202-457-0473 · www.aapd-dc.org

FROM :

FAX NO. :

Apr. 26 2007 12:45PM P2

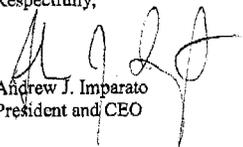
The Honorable Vernon Ehlers  
April 26, 2007  
Page 2

this important study. In the absence of these findings, how can election officials move forward with a 2008 deadline for accessible paper ballots?

HAVA's requirement that all polling places have at least one accessible voting machine by 2006 has resulted in significant improvements in voting access since the 2002 elections. AAPD does not want to see the nation move backwards on accessible voting technology. We therefore urge you to vote no on the passage of H.R. 811 and protect the rights of people with disabilities to vote privately and independently.

Your thoughtful consideration of this critical issue and fundamental right – voting – is appreciated.

Respectfully,



Andrew J. Imparato  
President and CEO

The CHAIRMAN. Thank you.

Mr. Ehlers, I think you had a substitute and I think that I want to recognize you for five minutes to speak on your substitute.

Mr. EHLERS. On this substitute or on my substitute?

The CHAIRMAN. Your substitute, we are on your substitute now.

Mr. MCCARTHY. I was just going to ask a point of information. I am a little confused about where we are currently because the gentlewoman from California left. Are we going to debate her bill are we going to recess until she comes back?

The CHAIRMAN. She introduced her substitute, and I thought Mr. Ehlers introduced a substitute to her substitute.

Mr. MCCARTHY. Did you make a motion?

Mr. EHLERS. I have not offered my substitute.

The CHAIRMAN. We are still on Lofgren substitute. I would like to recognize Mr. Capuano.

Mr. CAPUANO. I want to make it clear. I voted against HAVA when it was first proposed. I voted against it because of a lot of things that happened since then. I thought I was right then and in hindsight, I think I was right still. But at the same time, we weren't allowed to offer amendments. We weren't allowed to have discussions in a serious way. I am a former elected official—a formal locally elected official—a former mayor.

Mr. EHLERS. You are working on it?

Mr. CAPUANO. Not yet. I will leave that one alone.

But as a former mayor, we ran elections. I have hands-on experience with picking machines, talking to election officials, making sure that elections, both State, Federal and local, were run appropriately. The HAVA bill did not assure me in any level that number one, the money was going to be there; number two, that the bad actors were going to be told given standards; number 3 that the good actors were in any way going to be encouraged to continue to be good actors.

So that was an easy vote for me. I agree that some of the provisions in the bill are still not done yet. I don't have any problem with that. I have yet to see a bill ever that is perfect no matter how you look at it.

I do, however, believe this bill is a significant step in the right direction, as I understand, I am relatively familiar with most of the provisions in the substitute, I think it is still a step forward. There are still some problems I have with it. But again, I could sit here and talk about the negative or the positive. And the negative, there is still some time in the process for me to have input and everybody have input to make it better.

At the same time, I think it is the right thing to do to move this bill forward, continue to work on it to make it better as we all see making it better might decide, let the process work and get this going. Because I think everybody can sit here today—I don't think anybody is going to argue that the process we have now, current law we are living under now is a good law.

HAVA had huge holes in it. And if we can't fix every one of them, if we are not going to be able to address every single issue that is of concern to each and every one of us, that is not an argument not to make significant progress. So I want to make it clear. I voted against HAVA. I am glad I voted against HAVA. But I intend to

vote for this bill. And I hope between now and the team, it actually gets to the President's desk, there is still some things I would like to have further discussion on as well, and I think there will be plenty of opportunity for all of us to do that. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. The gentleman from California Mr. McCarthy.

Mr. MCCARTHY. Mr. Chairman, if I can just ask a point of information. Is the time that is allotted right now my 5 minutes, taking my 5 minutes to ask questions about this bill?

The CHAIRMAN. You have five minutes now on the Lofgren substitute.

Mr. MCCARTHY. Mr. Chairman if I may, I would like to withhold and I would like to allow others to go before me. I would wait until somebody comes back that can answer the questions on the bill if I may.

The CHAIRMAN. Well, she is not here at the moment, but she will be back. Hopefully she will come back in time and you will have a chance to ask her questions, but right now we are going to move forward on her substitute.

Mr. MCCARTHY. Mr. Chairman, I was the ranking member on the subcommittee that dealt—we did three hearings on this and I am very concerned. Couple of points. This bill you have mentioned, it wasn't ready. We have got a presidential election coming up where primaries are moved up. Florida is moving up to January. My home State moved it up to February. And we are now going to gut the system and change the system when we haven't finished even going through the HAVA and finishing paying and now we want to move a bill today that we had to postpone from last week and we don't have the ability to debate it? I am very concerned because in these hearings, many of you weren't able to be here because you weren't on the subcommittee. But election official after election official has come before us and said, this bill is not ready.

And I think we are making a major decision here, one, with the lack of debate; two, with the inability to answer the questions, and I think from a perspective when we come to this issue, we should put people before politics. This shouldn't be a partisan issue, a partisan debate. And I don't think you would see it on this side of the aisle.

But from my point of view, I am feeling frustrated because this is such a serious issue that we don't have the ability to debate it. We don't have the ability to answer the question. And we may be able to come to a point where we find common ground.

So with all due respect, I am just asking for the point that I would gladly wait until she is back into the room where maybe we could find a place that we can get to. I yield back my time to you.

The CHAIRMAN. If we could maybe hear Mr. Ehlers' substitute, debate that, vote on that and by that time Ms. Lofgren should be back and we can ask her questions then.

Mr. LUNGREN. Is the suggestion that Mr. Ehlers' substitute is not going to be adopted?

The CHAIRMAN. We don't know. We have to vote on that. We will have a vote.

Mr. EHLERS. If I may reclaim the time I yielded back earlier. I was just so surprised that the offerer of the substitute immediately left the room making it impossible to ask questions or get answers. I share Mr. McCarthy's frustration on that.

My problem is, as Mr. Capuano's about HAVA, it is a process. I would like to work together, have this be a bipartisan bill as HAVA was. I would like to work with the Senate, have it be a bicameral bill as HAVA was. I have already been told by people in the Senate that this version, even though with the substitute, is dead on arrival there, it seems like a waste of time to work on a bill that is going to be totally forgotten about once it reaches the Senate and they plan to write their own.

So it is just a very confusing process. I suppose I could offer my substitute and run out of the room to avoid anyone asking any questions on it.

But that is a hard way to accomplish progress. So Mr. Chairman, I understand the spot you are in. You are not responsible for what your Members do, but it is very disconcerting to try to have a discussion when one party leaves the room. I will yield back.

The CHAIRMAN. We made an accommodation we will come back to that when it comes in, if it is dead on arrival I don't know why you are offering amendments on substitutes but we are allowing you to do that also. Oh, his isn't dead on arrival, only ours is dead on arrival.

I now recognize the Ranking Member for the substitute.

Mr. EHLERS. To try to move things along, Mr. Chairman, let me just say I have an amendment at the desk.

The CHAIRMAN. Without objection, the substitute is considered as read and the gentleman is recognized for five minutes.

[The information follows:]

**AMENDMENT TO SUBSTITUTE****OFFERED BY MR. EHLERS****Minority substitute**

In lieu of the matter proposed to be inserted by the substitute, insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Voting Enhancement  
3 and Security Act of 2007”.

**4 SEC. 2. ESTABLISHMENT OF FEDERAL GUIDELINES FOR  
5 ELECTRONIC VOTING EQUIPMENT.**

6 (a) ESTABLISHMENT OF GUIDELINES; SUPPORT  
7 FROM NATIONAL INSTITUTE OF STANDARDS AND TECH-  
8 NOLOGY.—Section 221 of the Help America Vote Act of  
9 2002 (42 U.S.C. 15361 et seq.) is amended—

10 (1) by redesignating subsection (f) as sub-  
11 section (g); and

12 (2) by inserting after subsection (e) the fol-  
13 lowing new subsection:

14 “(f) SPECIAL RULES FOR ESTABLISHMENT OF  
15 GUIDELINES FOR ELECTRONIC VOTING EQUIPMENT.—

16 “(1) ESTABLISHMENT OF GUIDELINES.—In ad-  
17 dition to any other guidelines developed under this  
18 section, the Development Committee shall develop

1 specific guidelines for the operation of electronic vot-  
2 ing equipment in elections for Federal office under  
3 which the equipment will comply with each of the  
4 following technologies:

5 “(A) A technology that allows a contem-  
6 poraneous, redundant, and auditable trail of the  
7 votes cast or recorded on such equipment. For  
8 purposes of this subparagraph, a trail is ‘con-  
9 temporaneous’ if it is created and recorded at  
10 the same time as the original record.

11 “(B) A technology that allows each indi-  
12 vidual who is eligible to vote in such an election  
13 to verify the ballot before the individual’s vote  
14 is cast into the equipment.

15 “(C) A technology that ensures reliable se-  
16 curity of the equipment from tampering or im-  
17 proper use.

18 “(D) A technology that ensures that indi-  
19 viduals with disabilities who are eligible to vote  
20 in the election can vote independently and with-  
21 out assistance.

22 “(2) TECHNICAL SUPPORT FROM NIST.—The  
23 Director of the National Institute of Standards and  
24 Technology shall provide the Development Com-  
25 mittee with technical support in the development of

1 the guidelines for electronic voting equipment under  
2 this subsection, in the same manner as the technical  
3 support provided under subsection (e).

4 “(3) DEADLINE.—The Director shall complete  
5 the requirements of subsection (a) not later than  
6 January 1, 2010.”.

7 (b) REQUIRING STATES TO MEET GUIDELINES.—

8 (1) REQUIREMENT.—

9 (A) IN GENERAL.—Section 301 of such  
10 Act (42 U.S.C. 15481) is amended—

11 (i) by redesignating subsections (b)  
12 through (d) as subsections (e) through (g);  
13 and

14 (ii) by inserting after subsection (a)  
15 the following new subsection:

16 “(b) SPECIAL REQUIREMENTS FOR ELECTRONIC  
17 VOTING EQUIPMENT.—

18 “(1) IN GENERAL.—Any voting system which  
19 consists in whole or in part of an electronic vote re-  
20 cording device or an electronic vote tabulation device  
21 shall meet the voting system guidelines applicable to  
22 such devices which are adopted by the Commission  
23 pursuant to section 222 (in accordance with the re-  
24 quirements for the development of such guidelines  
25 under section 221(f)).

1 “(2) DEFINITIONS.—In this subsection—

2 “(A) the term ‘vote recording device’  
3 means the mechanism or medium used for re-  
4 cording a voter’s ballot choices; and

5 “(B) the term ‘vote tabulation device’  
6 means the mechanism or equipment used to  
7 tabulate the votes recorded on the vote record-  
8 ing device.

9 “(3) EFFECTIVE DATE.—Paragraph (1) shall  
10 apply with respect to elections for Federal office held  
11 in 2014 and each succeeding year.”.

12 (B) CONFORMING AMENDMENT.—Section  
13 301(e) of such Act (42 U.S.C. 15481(e)), as re-  
14 designated by subparagraph (A), is amended by  
15 striking “Each State” and inserting “Except as  
16 provided in subsection (b), each State”.

17 (2) AVAILABILITY OF FUNDING FOR MEETING  
18 REQUIREMENTS.—Section 257(a) of such Act (42  
19 U.S.C. 15407(a) is amended by adding at the end  
20 the following new paragraph:

21 “(4) For fiscal year 2013, \$1,000,000,000, ex-  
22 cept that any funds provided under the authoriza-  
23 tion made by this paragraph shall be used by a  
24 State only to meet the requirements of section

1 301(b), or to otherwise modify or replace its voting  
2 systems in response to such requirements.”.

3 **SEC. 3. REQUIRING AUDITS OF RESULTS OF ELECTIONS.**

4 (a) REQUIRING STATES TO ADMINISTER AUDITS IN  
5 ACCORDANCE WITH STATE PLAN.—Subtitle A of title III  
6 of the Help America Vote Act of 2002 (42 U.S.C. 15481  
7 et seq.) is amended by inserting after section 303 the fol-  
8 lowing new section:

9 **“SEC. 303A. AUDITS OF RESULTS OF ELECTIONS.**

10 “(a) REQUIRING STATES TO ADMINISTER AUDITS IN  
11 ACCORDANCE WITH STATE PLAN.—

12 “(1) IN GENERAL.—Each State shall admin-  
13 ister audits of the results of elections for Federal of-  
14 fice held in the State in accordance with a State  
15 audit plan which describes the entity responsible for  
16 administering the audits, the procedures for admin-  
17 istering the audits, and the rules for determining  
18 which elections will be subject to audits and the  
19 number of tabulation units in which the audits will  
20 occur.

21 “(2) TABULATION UNIT DEFINED.—In this sub-  
22 section, the term ‘tabulation unit’ means, with re-  
23 spect to an election, a unit established by the State  
24 prior to the election (such as a precinct, polling loca-  
25 tion, or particular type of voting device) in which the

1 votes tabulated by the voting system used in the unit  
2 may be compared with the audit of the results of the  
3 ballots cast in the unit.

4 “(3) SUBMISSION OF PLAN TO COMMISSION.—  
5 Not later than January 1, 2009, the State shall sub-  
6 mit its initial State audit plan under this section to  
7 the Commission.

8 “(b) CERTIFICATION.—A State does not meet the re-  
9 quirements of this section unless the chief executive of the  
10 State and the chief election official of the State certify  
11 that the State audit plan provides for the fair and effective  
12 administration of audits under procedures that are trans-  
13 parent and open to the public.

14 “(c) EFFECTIVE DATE.—This section shall apply  
15 with respect to the regularly scheduled general elections  
16 for Federal office held in November 2010 and each suc-  
17 ceeding election for Federal office.”.

18 (b) AVAILABILITY OF ENFORCEMENT.—Section 401  
19 of such Act (42 U.S.C. 15511) is amended by striking  
20 “sections 301, 302, and 303” and inserting “subtitle A  
21 of title III”.

22 (c) CLERICAL AMENDMENT.—The table of contents  
23 of such Act is amended by inserting after the item relating  
24 to section 303 the following:

“303A. Audits of results of elections.”.

1 **SEC. 4. REQUIRING STATES TO DEVELOP AND IMPLEMENT**  
2 **ELECTION SECURITY PROTOCOLS AND CON-**  
3 **TINGENCY PLANS.**

4 (a) IN GENERAL.—Subtitle A of title III of the Help  
5 America Vote Act of 2002 (42 U.S.C. 15481 et seq.), as  
6 amended by section 3(a), is further amended by inserting  
7 after section 303A the following new section:

8 **“SEC. 303B. DEVELOPMENT AND IMPLEMENTATION OF**  
9 **ELECTION SECURITY PROTOCOLS AND CON-**  
10 **TINGENCY PLANS.**

11 “(a) REQUIREMENTS FOR STATES.—Each State and  
12 jurisdiction which administers elections for Federal office  
13 shall—

14 “(1) develop and implement security protocols  
15 for protecting the voting equipment used in such  
16 elections and for ensuring the security of the admin-  
17 istration of such elections; and

18 “(2) develop and implement contingency plans  
19 for addressing voting system failures and other  
20 emergencies which may occur on the date of such an  
21 election, including the protocols to be followed at  
22 polling places and the protocols applicable to the use  
23 of emergency ballots.

24 “(b) EFFECTIVE DATE.—This section shall apply  
25 with respect to the regularly scheduled general election for

1 Federal office in November 2008 and each succeeding  
2 election for Federal office.”.

3 (b) CLERICAL AMENDMENT.—The table of contents  
4 of such Act, as amended by section 3(c), is further amend-  
5 ed by inserting after the item relating to section 303A the  
6 following:

“303B. Development and implementation of election security protocols and con-  
tingency plans.”.

Amend the title so as to read: "A bill to amend the Help America Vote Act of 2002 to require States to meet Federal guidelines for the operation of electronic voting equipment, and for other purposes."

Mr. EHLERS. I thank the gentleman for yielding. What we have tried to do is make an honest effort to improve the bill as submitted and the version that this committee had originally developed, the majority of the committee had originally developed. It directs the Election Assistance Commission, with the help of NIST, to establish guidelines and standards for new Federal election equipment by January 1, 2010. Everyone we have talked to, all of the election officials, State election officials said 2008 is simply impossible.

I take their word for that. They are the experts. So we have tried for 2010 effective date. This provides a technology that allows a contemporaneous, redundant and auditable trail of votes cast recorded on such equipment which was the purpose of the original Holt bill.

It provides a technology that allows each individual who is eligible to vote in such an election to verify the ballot before the individual's vote is cast into the equipment.

It provides a technology that ensures reliable security of the equipment from tampering or improper use. It provides a technology that ensures that individuals with disabilities who are eligible to vote in the election can vote independently and without assistance.

States would need to be compliant with the new guidelines and standards as soon as they are able to do that. We estimate by 2014, they would certainly have everything in place and available for use. The real item that sticks in the craw of the States is the plan for audits. States are ready to have their own audits. They resent being told by the Federal Government how they should handle their audits. In particular, most States who have talked to me believe that the proposal in the bill is worse than nothing because it interferes with a recount process, interferes with a board of canvass review, and it does not really accomplish the audit the way it should be accomplished.

State security plans. States would have to submit to the Election Assistance Commission by January 1, 2008, security protocols as far as voting machines and administering elections. So every State would have to prepare its security plan.

State contingency plans. Each State must submit to the EAC by January 1, 2008 its contingency plans for election day emergencies or voting machine malfunctions. Plans must include a polling place and emergency ballot protocols.

There are many other factors that make this substitute better than the Lofgren substitute. It is supported by the National Association of Counties, because they realize this approach fits with the proven idea of allowing the States to have the flexibility to meet Federal requirements in election law. H.R. 811 directly undermines the valuable gains from HAVA and takes us back to 19th century election systems and procedures.

My substitute looks to use technology to improve the voting system, not revert back to requirements and problematic paper. It has been 5 years since the enactment of HAVA, and there are still States that have yet to fully comply with requirements. Until that happens, we are unable to accurately measure its successes and

shortcomings. My substitute allows for enough time to rationally make changes to this system.

Recently, EAC commissioner Gracia Hillman testified during an Oversight and Government Reform Subcommittee hearing that if H.R. 811 were enacted, over 180,000 voting machines would need to be replaced or upgraded nationwide for the 2008 elections. Another factor there is technology being developed that would be accessible to disabled voters and allow them to verify their vote independently and privately. That technology is not yet ready available or certified.

Mississippi Secretary of State Eric Clark testified there is no way under the sun we—that is State election administrators—can make the kind of changes that are contemplated in H.R. 811 by next year's elections.

George Gilbert stated we are concerned that the implementation date of 2008 would actually collapse the election system. I could go on and on with this. But the pulp is simply the Lofgren substitute does not solve the problems in H.R. 811. It is a noble attempt, but it doesn't accomplish it. I believe that my substitute does accomplish what H.R. 811 wants to accomplish, and it does so in a workable fashion. With that, I yield back the balance of my time.

[The information follows:]



May 8, 2007

The Honorable Vernon Ehlers, Ranking Member  
Committee on House Administration  
U.S. House of Representatives  
1319 Longworth House Office Building  
Washington, D.C. 20515

Dear Representative Ehlers:

I am writing to offer the support of the National Association of Counties for the "Voting Enhancement and Security Act of 2007".

Responsibility for the conduct and accompanied cost of elections is historically that of state and county governments throughout America. Accordingly, ensuring the accuracy and integrity of that process is the responsibility of county election officials. However, the National Association of Counties recognizes our partnership role with the federal government and has consistently maintained that we would support federal legislation to ensure the accuracy and integrity of voting equipment and procedures and the transparency of audits and recounts as long as that legislation sets realistic standards and allows sufficient time, flexibility and funding for implementation.

Accordingly, we support your substitute amendment to H.R. 811, which would direct the National Institute of Standards and Technology to set standards for voting equipment and provide states with time and flexibility to implement those standards, and which would permit states the flexibility to adopt audit and election security and contingency plans that are designed for and suited to the needs of their own local jurisdictions.

We applaud your leadership on this critical issue. If you have any questions, please contact Alysoun McLaughlin, Associate Legislative Director, at 202-942-4254 or [amclaughlin@naco.org](mailto:amclaughlin@naco.org).

Sincerely yours,

A handwritten signature in black ink that reads "Larry E. Naake". The signature is written in a cursive style.

Larry E. Naake  
Executive Director

Opposition to HR 811				
State	County/Office/ Board	Name	Title	Date
Arizona	Maricopa County	Helen Purcell	Recorder	3/28/2007
Arizona	Maricopa County Elections Department	Karen Osborne	Director	5/3/2007
Arkansas	Secretary of State	Charlie Daniels	Secretary of State	4/11/2007
California	Contra Costa County	Stephen Weir	County Clerk-Recorder	4/16/2007
California	Riverside County	Tom Courbat	Executive Director	3/29/2007
California	Los Angeles County Board of Supervisors	Reginald Todd	Chief Legislative Representative	3/28/2007
California	California State Association of Counties	Karen Keene	Legislative Representative	3/28/2007
California	California Association of Clerks and Election Officials	Steve Weir	President	4/25/2007
California	Butte County	Paul McIntosh	CAO	5/2/2007
California	Butte County	Candace Grubbs	Clerk-Recorder-Registrar	3/28/2007
California	Butte County	Candace Grubbs	Clerk-Recorder-Registrar	5/2/2007
California	El Dorado County	William Schultz	Recorder-Clerk-Registrar	3/28/2007
California	Shasta County	Cathy Darling	Clerk/Registrar	3/27/2007
California	Kern County	Ann Barnett	Auditor-Controller-Clerk	3/28/2007
California	Kern County	Ann Barnett	Auditor-Controller-Clerk	5/3/2007
California	Yuba County	Hal Stocker	Chairman	3/27/2007
California	Placer County	Jlm McCauley	Clerk-Recorder-Registrar	5/3/2007
California	Riverside County	Thomas Walters	Washington Rep	5/3/2007
California	San Mateo County	Warren Slocum	Chief Elections Officer	5/3/2007
California	San Diego County	Thomas Walters	Washington Rep	5/3/2007
California	San Joaquin County	Deborah Hench	Registrar	5/2/2007
California	San Joaquin County	Deborah Hench	Registrar	3/27/2007
California	San Luis Obispo County	Julie Rodewald	Clerk & Recorder	4/20/2007
Colorado	Washington County	Garland Wahl	Clerk & Recorder	4/13/2007
Colorado	Washington County	Garland Wahl	Clerk & Recorder	5/2/2007
Colorado	Bent County	Patti Nickell	Clerk & Recorder	5/2/2007

Colorado	Mesa County	Janice Rich	Clerk & Recorder	4/11/2007
Colorado	San Miguel County	Peggy Nerfin	Clerk & Recorder	5/3/2007
Colorado	Morgan County	Connie Ingmire	Clerk & Recorder	5/3/2007
Colorado	Clear Creek County	Pam Phipps	Clerk & Recorder	5/3/2007
Colorado	Arapahoe County	Nancy Doty	Clerk & Recorder	4/9/2007
Colorado	Secretary of State	Mike Coffman	Secretary of State	3/15/2007
Connecticut	Secretary of State	Susan Bysiewicz	Secretary of State	3/28/2007
Florida	Secretary of State	Kurt Browning	Secretary of State	4/20/2007
Florida	Pinellas County	Deborah Clark	Supervisor of Elections	4/12/2007
Florida	Okaloosa County	Patricia Hollan	Supervisor of Elections	5/2/2007
Florida	Franklin County	Doris Gibbs	Supervisor of Elections	5/2/2007
Florida	Polk County	Lori Edwards	Supervisor of Elections	4/11/2007
Florida	Liberty County	Marcia Wood	Supervisor of Elections	5/2/2007
Florida	Liberty County	Marcia Wood	Supervisor of Elections	4/16/2007
Georgia	Wilkes County	Jim (J.C.) Burton	Election Superintendent	3/28/2007
Georgia	Fulton County	April Pye	Director	2/27/2007
Georgia	Barrow County Board of Elections and Registration	Kristi Royston	Election Supervisor	5/2/2007
Georgia	Barrow County Board of Elections and Registration	Doug Garrison	Chairman	3/28/2007
Idaho	Bingham County	Marlene Jensen	Elections Director	3/28/2007
Illinois	Bloomington Board of Election Commissioners	Charlene Stanford	Executive Director	4/11/2007
Illinois	McHenry County	Katherine Schultz	Clerk	5/2/2007
Illinois	Warren County	Tina Conard	Clerk	5/3/2007
Illinois	Grundy County	Lana Phillips	Clerk	5/3/2007
Illinois	Henderson County	Marcella Ciema	Clerk	5/3/2007
Illinois	Morgan County	Barbara Gross	Clerk	5/3/2007
Illinois	Brown County	Judy Woodward	Clerk	5/3/2007
Illinois	Knox County	Scott Erickson	Clerk	5/3/2007
Illinois	DuPage County Election Commission	Robert Saar	Executive Director	5/3/2007
Illinois	Kane County	John Cunningham	Clerk	3/29/2007
Illinois	Kane County	John Cunningham	Clerk	5/3/2007
Indiana	Jay County	Jane Ann Runyon	Clerk, Jay Circuit Court	5/2/2007
Indiana	Jay Circuit Court	Jane Ann Runyon	Clerk, Jay Circuit Court	4/11/2007
Indiana	Pike Circuit Court	Shirley Van Meter	Clerk	5/3/2007
Indiana	Greene Circuit Court	Jackie Winstead	Clerk	5/3/2007
Indiana	Noble County	Candy Myers	Clerk	5/3/2007
Iowa	Black Hawk County	Grant Veeber	County Auditor	4/4/2007
Iowa	Pottawattamie County	Marilyn Jo Drake	County Auditor	5/3/2007
Kansas	Secretary of State	Ron Thornburgh	Secretary of State	4/17/2007
Kentucky	Fayette County	Don Blevins	Clerk	5/2/2007

Louisiana	Secretary of State	Jay Dardenne	Secretary of State	3/27/2007
Louisiana	Lincoln Parish	Dianna Stone	Registrar	5/3/2007
Maryland	Washington County	Washington County Board of Elections		5/2/2007
Maryland	Maryland Association of Election Officials	Sara Harris	Co-Chair	5/2/2007
Maryland	Montgomery County	Isiah Leggett	County Executive	3/29/2007
Michigan	Allegan County	Joyce Warrts	Clerk	5/2/2007
Michigan	Lake County	Sharyn McGreehan	Chief Dep Elections Admin	5/2/2007
Mississippi	Secretary of State	Eric Clark	Secretary of State	4/11/2007
Missouri	Secretary of State	Dick Burke	Executive Director	4/13/2007
Missouri	Association of Counties	Robin Carnahan	Clerk and Election Authority	4/12/2007
Missouri	Marion County	Bob Ravenscraft	Clerk	4/4/2007
Missouri	Texas County	Donald Troutman	Clerk	5/2/2007
Missouri	Texas County	Donald Troutman	Clerk	5/2/2007
Missouri	Macon County	Pat Clarke	Clerk	5/2/2007
Missouri	Grundy County	Kristi Urich	Clerk	5/2/2007
Missouri	Monroe County	Sandra Francis	Clerk	5/3/2007
Missouri	Franklin County	Debbie Door	Clerk	5/3/2007
Missouri	Linn County	Peggy Ward	Clerk	5/2/2007
Missouri	Lafayette County	Linda Niendick	Clerk	5/2/2007
Missouri	Platte County	Mary Beth Erickson	Director	5/2/2007
Missouri	Pike County	Bob Kirpatrick	Clerk	5/3/2007
Missouri	Scott County	Rita Mlarn	Clerk	5/2/2007
Missouri	Cole County	Marvin Register	Clerk	5/2/2007
Missouri	Dekalb County	Mary Berry	Clerk	5/2/2007
Missouri	Polk County	Sue Enlicher	Clerk	5/3/2007
Missouri	Polk County	Sue Enlicher	Clerk	5/28/2007
Nebraska	Cass County	Nancy Josoff	Election Commissioner	4/11/2007
New York	Yates County	Pamela Welker	Commissioner	4/4/2007
North Carolina	Davidson County Board of Elections	HL Hill	Chairman	5/2/2007
North Carolina	Alleghany County Board of Elections	Kate Cosner	Director	5/2/2007
North Carolina	Hyde County Board of Elections	Cindy Carawan	Director	5/2/2007
North Carolina	Moore County Board of Elections	Glenda Clendenin	Director	5/2/2007
North Carolina	Jackson County Board of Elections	Steve Foster	Chairman	5/3/2007
North Carolina	Montgomery County Board of Elections	Martha Griego	Director	5/3/2007
North Carolina	Jackson County Board of Elections	Lisa Lovedahl	Director	5/3/2007
North Carolina	Davie County Board of Elections	Margaret Shew	Director	5/3/2007
North Carolina	Wilkes County Board of Elections	Kim Caudill	Director	5/3/2007
North Carolina	Currituck County Board of Elections	Mary Etheridge	Director	5/2/2007
North Carolina	Guilford County	George Gilbert	Director of Elections	5/2/2007

North Dakota	Rolette County	Valerie McCloud	Auditor	5/2/2007
North Dakota	Barnes County	Edward McGough	Auditor	5/2/2007
North Dakota	Sargent County	Sherry Hosford	Auditor	5/2/2007
North Dakota	Wells County	Janel Rudel	Auditor	5/2/2007
North Dakota	Nelson County	WJ Davidson	Auditor	5/2/2007
North Dakota	Sioux County	Barb Heitich	Auditor	5/2/2007
North Dakota	Griggs County	Cynthia Anton	Auditor	5/2/2007
North Dakota	Kidder County	Ruth Graf	Auditor	5/2/2007
North Dakota	Dickey County	Lawrence Hoffman	Auditor	5/2/2007
Ohio	Ohio Association of Election Officials	Matthew Damschroder	President	5/2/2007
Ohio	County Commissioners Association of Ohio	Olen Jackson	President	5/2/2007
Ohio	Delaware County	Susan Phillips	N/A	4/19/2007
Ohio	Ashland County	Kathy Howman	Director	5/3/2007
Ohio	Richland County	Paulette Hankins	Director	3/28/2007
Ohio	Holmes County	Lisa Welch	Director	5/2/2007
Ohio	Putnam County Board of Elections	Virginia Price	Director	3/29/2007
Ohio	Perry County Board of Elections	Janie DePinto	Director	3/28/2007
Oklahoma	Cleveland County Election Board	Paula Roberts	Secretary	4/11/2007
Oregon	Oregon Association of County Clerks	Steve Druckenmiller	President	5/3/2007
Oregon	Deschutes County	Nancy Blankenship	Clerk	5/3/2007
Oregon	Linn County	Steve Druckenmiller	Clerk	5/3/2007
Oregon	Douglas County	Barbara Nielsen	Clerk	5/3/2007
Pennsylvania	County Commissioners Association of Pennsylvania	Douglas Hill	Executive Director	3/28/2007
Pennsylvania	Clarion County	Ronald Kuzmovich	Elections Director	3/28/2007
Pennsylvania	Forest County Commissioners	Basil Huffman	Chairman	5/2/2007
Pennsylvania	Forest County Commissioners	Basil Huffman	Chairman	3/28/2007
Pennsylvania	Perry County	John Arnsler	Chairman	3/28/2007
Pennsylvania	Elk County	Kimberly Frey	Director	5/2/2007
Pennsylvania	Somerset County Commissioners	Donna Asure	Chairman	5/2/2007
Pennsylvania	Monroe County Commissioners	John Eggleston	Vice Chairman	5/2/2007
Pennsylvania	Warren County Commissioners	John Eggleston	Vice Chairman	5/2/2007
Pennsylvania	Mercer County Board of Commissioners	Brian Beader	Chairman	3/29/2007
Pennsylvania	Lycoming County	Fred Marty	Chief Clerk	5/2/2007
Pennsylvania	Lycoming County	Sandra Adams	Director of Elections and Registration	3/29/2007
South Carolina	South Carolina State Election Commission	Marci Andino	Executive Director	4/11/2007
South Carolina	Orangeburg County	Pam McCarthur	Elections Assistant	3/29/2007

South Carolina	Orangeburg County	Pam McCarthur	Elections Assistant	5/3/2007
South Carolina	Abbeville County	Lynne West	Director of Elections and Registration	5/2/2007
South Carolina	Saluda County	Frances Jaynes	Administrator	3/28/2007
Tennessee	Scott County	Brenda Sexton	Administrator	4/12/2007
Tennessee	Scott County	Brenda Sexton	Administrator	5/3/2007
Tennessee	Knox County	Greg Mackay	Administrator	5/3/2007
Tennessee	Polk County	Sula Jenkins	Administrator	5/3/2007
Tennessee	Cooke County	Joyce Slagle	Administrator	5/3/2007
Tennessee	Meigs County	Clara Thompson	Administrator	5/3/2007
Tennessee	DeKalb County	Lisa Peterson	Administrator	5/3/2007
Tennessee	Carier County	Tracy Harris	Administrator	5/3/2007
Tennessee	Trousdale County	Linda Potts	Administrator	5/3/2007
Tennessee	Smith County	Charlene Bass	Administrator	5/3/2007
Tennessee	Union County	Sarah Bailey	Administrator	5/3/2007
Tennessee	Wayne County	Kay Inman	Administrator	5/3/2007
Tennessee	McNairy County	Nancy Kennedy	Commissioner	5/3/2007
Tennessee	Secretary of State	Riley Darnell	Secretary of State	3/30/2007
Tennessee	Secretary of State	Riley Darnell	Secretary of State	5/3/2007
Texas	Martin County	Susie Hull	Clerk	5/1/2007
Texas	Archer County	Gary Beesinger	County Judge	5/2/2007
Texas	Harris County	Beverly Kaufman	Clerk	5/2/2007
Texas	Dewitt County	Ben Prause	County Judge	5/3/2007
Texas	Kaufman County Courthouse	Dick Murphy	Elections Administrator	5/3/2007
Texas	Ector County	Robert Mendoza	Elections Administrator	3/28/2007
Utah	Emery County	Bruce Funk	Election Official	3/29/2007
Utah	Juab County	Patricia Ingram	Clerk Auditor	5/2/2007
Utah	Tooele County	Marilyn Gillette	Clerk	5/2/2007
Utah	Davis County	Steve Rawlings	Clerk Auditor	5/2/2007
Utah	David County	Mark Alton	Treasurer	3/28/2007
Utah	Washington County	Clavin Robinson	County Clerk and Auditor	3/28/2007
Vermont	Secretary of State	Deborah Markowitz	Secretary of State	3/28/2007
Virginia	City of Bristol	Penny Limburg	General Registrar	3/29/2007
Virginia	Arlington County	Linda Lindberg	General Registrar	5/3/2007
Virginia	Botetourt County	Phyllis Dierschow	General Registrar	5/3/2007
Virginia	Fauquier County	Alexander Ables	General Registrar	5/4/2007
Virginia	Charles City County	Catrina Barneycastle	General Registrar	4/3/2007
Washington	Secretary of State	Sam Reed	Secretary of State	3/27/2007
West Virginia	Brooke County	Sylvia Benzo	Clerk	5/3/2007
West Virginia	Mason County	Diana Cromley	Clerk	5/3/2007
West Virginia	Mason County	Diana Cromley	Clerk	3/28/2007
Wisconsin	County Clerks Association	James Thalacker	President	4/13/2007

Wisconsin	Outagamie County	Nancy Christensen	County Clerk	4/10/2007
Wisconsin	Town of Durand	Audrey Bauer	Town Clerk	3/28/2007
Wisconsin	Taylor County	Bruce Strama	Clerk	5/2/2007
Wisconsin	Walworth County	Kimberly Busney	Clerk	
Wisconsin	Sheboygan County	Julie Glancey	Clerk	3/28/2007
Wisconsin	Dane County	Robert Ohlsen	Clerk	5/3/2007
Wisconsin	Price County	Jean Gotwald	County Clerk	4/3/2007
Wisconsin	Wisconsin Counties Association	Jayne Sellen	Legislative Associate	3/28/2007
Wisconsin	Wisconsin Counties Association	Jayne Sellen	Legislative Associate	6/2/2007
Wisconsin	Wisconsin State Elections Board	Kevin Kennedy	Executive Director	3/28/2007
Wyoming	Hot Springs County	Hans Odde	County Clerk	5/2/2007
Wyoming	Hot Springs County	Hans Odde	County Clerk	4/11/2007
Wyoming	Fremont County	Julie Freese	Clerk	5/3/2007
Wyoming	Uinta County	Lynne Fox	County Clerk	5/2/2007
Wyoming	Uinta County	Lynne Fox	County Clerk	4/16/2007
	<b>Organization</b>	<b>Representative</b>	<b>Title</b>	<b>Date</b>
International Association of Clerks, Recorders, Election Officials and Treasurers		Rockne W. Clarke	President	4/20/2007
American Association of People with Disabilities		Andrew Imparato	President/CEO	4/26/2007
National Election Data Archive		Kathy Dopp	President	3/28/2007
Illinois Ballot Integrity Project		Executive Committee		25-Mar
National Conference of State Legislators		William Pound	Executive Director	3/19/2007
National Association of Counties		Larry Naake	Executive Director	3/18/2007
Asian American Justice Center				15-Apr
Black Box Voting		Bev Harris	Director	3/28/2007
Initiative of Software Choice		Mike Wendy	Director - Grassroots	3/23/2007
California Foundation of Independent Living Centers		Ann Guerra	Chairman of Board	4/6/2007
Citizens Alliance for Secure Elections		Pete Johnson	Member	5/2/2007
Protect California Ballots		Judy Alter	Director	4/12/2007
Business Software Alliance		Robert Holleyman	President & CEO	3/28/2007
Information Technology Industry Council		Rhett Dawson	President	3/27/2007
Association for Competitive Technology		Jonathan Zuck	President	3/27/2007



STATE OF MISSISSIPPI  
SECRETARY OF STATE  
ERIC CLARK

401 MISSISSIPPI STREET  
POST OFFICE BOX 136  
JACKSON, MISSISSIPPI 39205-0136

TELEPHONE (601) 359-1350  
FACSIMILE (601) 359-1499

April 11, 2007

The Honorable Juanita Millender-McDonald, Chair  
The Honorable Vernon Ehlers, Ranking Member  
House of Representatives Committee on House Administration  
Washington, D.C.

Via Fax Nos. 202-225-7664 and 202-225-9957

Dear Representative Millender-McDonald and Representative Ehlers:

On March 15, I was honored to testify before your Committee on proposed changes in the Help America Vote Act of 2002. At that time, I expressed serious concerns about proposed changes that we secretaries of state had heard were likely to be considered by Congress.

Since then, I have tried to learn all I could about this proposal. The more I have learned, the more concerned I have become. The bill -- even the draft committee amendment -- is terrible. Last week, I attended a meeting in Washington of elections officials from around the nation, who spent the day going through H.R. 811. The meeting was called by Doug Lewis, head of the non-partisan Election Center in Houston, Texas.

The more we examined this bill, the more problems and dangers we discovered in it. Near the end of the day, I asked the 26 elections officials there to rank the bill on a scale of one to ten -- with one being "terrible" and ten being "great." The vote was unanimous that the bill rates a one or zero. Secretary of State Riley Darnell of Tennessee summed up the sentiment: "If any major changes occur through these bills for 2008, we are talking about a disaster. No matter what else happens, 2008 is going to be a disaster." I completely agree.

Since that Washington meeting, my staff and I have spent many hours examining the proposed Committee amendment to H.R. 811 in detail. That analysis is attached. It would be devastating in its effect -- in Mississippi and nationally.

The Honorable Juanita Millender-McDonald, Chair  
The Honorable Vernon Ehlers, Ranking Member  
April 11, 2007  
Page 2

The Help America Vote Act of 2002 is a great law. It is successfully addressing the problems we saw in the Presidential election of 2000. The 2006 elections went remarkably smoothly with new machines nationwide and a myriad of new procedures. Please let our new system work and have time to shake out any kinks. Don't tear down all the progress we have made!

I have two heart-felt requests regarding any proposed changes in HAVA. **First, slow the process down. Do not act precipitously. Second, invite the nation's election community to help you write the bill.** If you tell us where you want to go, we will help you figure out how to get there! I am most grateful for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Eric Clark". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

ERIC CLARK  
Secretary of State of Mississippi

Attachment

cc: Members of the House of Representatives Committee on Administration  
Speaker Nancy Pelosi  
Majority Leader Steny H. Hoyer  
Minority Leader John A. Boehner

**Secretary of State Eric Clark of Mississippi**  
**Comments on H.R. 811 (Proposed Amendment 4/3/07)**  
**The "Voter Confidence and Increased Accessibility Act of 2007"**

---

This memorandum will outline the problems which we have been able to identify with proposed Amendment to H.R. 811, the "Voter Confidence and Increased Accessibility Act of 2007," which was authored by Representative Rush Holt of New Jersey (hereafter "the Holt Bill").

As a prefatory comment, we would note that this bill is not designed to increase voter confidence in the elections, but is very specifically designed to destroy voter confidence in the existing elections systems and the election officials who operate those systems. An attitude of distrust permeates the bill. Systems – including DRE and optical-scan systems – are automatically ruled as suspect, in favor of a hand-count, paper ballot system. Thus, the bill establishes an absolute preference for a totally subjective system over an objective system of counting votes. Election officials are excluded from overseeing mandated federal recounts and audits of election totals, even to the point of being specifically prohibited from certifying results until an audit is conducted of each and every federal election, no matter the margin of victory or the duration of those audits (with the only exception being a deadline for certifying a presidential election). Why? The clear implication is that those state election officials cannot be trusted to do their jobs with integrity and fairness (as opposed to a single designated state official – the State Auditor – who has nothing to do with elections). This bill goes out of its way to tear down the authority of existing election officials and the existing elections structures of the states – including, incredibly, those systems which were put in place pursuant to federal mandates in the "Help America Vote Act of 2002!"

Furthermore, as will be pointed out in more detail, the Holt Bill actually sets up a direct path for election fraud and manipulation of the process. And rather than increasing accessibility to the polls, the bill is specifically designed to limit voter accessibility among the disabled community and to ensure that the minority community's franchise remains subject to the same sources of manipulation that triggered the disaster of Florida in 2000.

Finally, the Holt Bill completely ignores this nation's election history. First, for years hand-count paper ballots were easily manipulated by unscrupulous individuals to produce the election results that they desired or were paid to produce. These fraudulent activities spurred on the technological development of the first "voting machines," such as lever machines and punch card systems. While better than hand counted paper ballots, in the 2000 federal election cycle these systems were shown to be antiquated, with disastrous results. The terrible upheaval of Florida in 2000 – with poorly designed punch card ballots, inadequate marking techniques, and the painstakingly slow, subjective process of a massive hand-recount – led to many prominent national studies of election systems. The determination was that we could do better, using modern technology developed for other sectors of business and government. Waiting until these studies were

completed, Congress responded in a very thorough, deliberative manner – the passage of HAVA in 2002.

Unfortunately, there are those within our society who do not trust these modern, technological developments. They appear to believe that the Earth is flat – and are incapable, through scientific proof or reason – to believe otherwise. It is their fingers that are most easily seen in the Holt Bill. Indeed, most of the measures of the bill have been specific items on their agenda since passage of HAVA – before a single vote was cast on a single DRE. Their goal is simple and clearly stated on their websites and propaganda material – we must go back to hand-count paper ballots. Indeed, as will be seen, this is the central feature of the Holt Bill – no election can be certified until a hand-recount or audit is performed at enormous cost to the states and the country. Ergo, why not just return to that system in the first place and make everyone’s life easier? **Of course, this completely ignores the election of 2000 and the progress made in HAVA, especially with regard to the two central goals of HAVA – second chance voting and disabled accessibility to the voting booth, both impossible with an old style paper ballot system.**

In summary, rather than fixing existing problems in elections – real or perceived, the Holt Bill guarantees an unprecedented disaster in the 2008 Presidential election and beyond.

In support of the foregoing, the following is a point by point analysis of the proposed committee amendment to the Holt Bill:

- Pg. 2, Lines 12-15 – This clause of the bill states that a ballot will only be legal in a federal election if “the voter is permitted to verify the ballot *in a paper form* in accordance with this subparagraph.” (Emph. added). This seems to require that every voter must be given the right to verify his or her vote by a paper record and in an independent manner. This appears to contradict a later provision of the bill (Pg. 7, Line 20–Pg. 8, Line 6; Pg. 11, Lines 6-12) which would permit an audio verification of the voter’s preferences in cases where the voter is blind or illiterate. It also seems to contradict a provision that would continue to permit voter assistance, as required by the Voting Rights Act. It should be noted that approximately 90 percent of the blind community does not use Braille. Therefore, a question arises that if audio verification is being outlawed by the Holt Bill, how would such a person ever be able to verify his or her ballot choices?
- Pg. 2, Line 22–Pg. 3, Line 2 – This provision of the bill mandates in broad terms that there be no way that a person’s vote on the voter-verified paper ballot could be tracked. Achieving this goal should rest upon procedural guidelines and not on technological solutions. Furthermore, this provision certainly would require the systematic use of more than one voting device in each precinct. Note – this is an existing “best practice” in Mississippi but not a requirement.

- Pg. 3, Lines 6-10 – Establishes that the voter-verified paper trail is the official ballot in every federal election. Note – in Mississippi, the paper ballot is the official record for purposes of an election contest.
- Pg. 4, Lines 4-10 – The voter-verified paper trail must “be suitable for a manual audit equivalent to that of a paper ballot voting system, and shall be counted *by hand* in any recount or audit conducted with respect to any election for Federal office.” This is the first of several reiterations that any recount or audit of ballots must be by manual hand count. Again, this procedure is the equivalent of the 2000 Florida method which received universal condemnation and directly led to HAVA (how quickly we forget history!). It is a process that is totally subjective, relying upon an individual election/audit official to determine whether there is a vote and what that vote is. When one examines the 2000 Florida situation, one can easily see the folly of this method being the only legal one – to date, after seven years and numerous studies by scholars and news organizations, no one has been able to determine the exact vote count in Florida. The reason – the subjectivity of the process employed, even in the face of some effort at establishing objective standards. When assessing this requirement, one must take into account the size of the paper being used (very small) and the average age of the poll workers in this country. In addition to the problem with the method, a hand count process guarantees a huge increase in the cost and time to perform any recount or audit of the ballots.
- Pg. 4, Lines 11-12 – Another direct pronouncement that the “individual permanent paper ballots [the voter-verified paper trail] shall be the true and correct record of the votes cast.” Again, it is a process that is totally subjective, relying upon an individual election/audit official to determine whether there is a vote and what that vote is.
- Pg. 5, Lines 17-22 – Pre-empts any state laws that permit the electronic tally of votes to be the official certified vote tally. This provision states that the electronic tally “shall not be used as the exclusive basis” if there is an inconsistency for any reason between the electronic vote tally and the hand count tally mandated by the bill to be performed.
- Pg. 8, Line 19- Pg. 9, Line 7 – This provision of the Holt Bill is one of the most nonsensical of the entire act. It requires the National Institute of Standards and Technology (“NIST”) to conduct a comprehensive study of the existing voting systems to assess their accessibility for disabled voters, illiterate voters and those voters whose primary language is not English, and to report those results in July of 2009. Please understand that the remaining portions of the bill have already rendered those existing voting systems unusable in their present forms. Thus, if a study proved that the existing systems were more accessible to these voters than the hand-count paper ballot systems of a 100+ years ago, then Congress would have to go back and undo everything in the Holt Bill. And this is a very real possibility. We in Mississippi have heard wonderful comments from the disabled

community. Inspiring examples have been provided that for the first time in their lives, blind voters have been able to cast ballots independently and without assistance, using the DRE machines. And we have heard great testimonials from the Choctaw community that for the first time they have had ballots delivered to them – in both print screen format and audio format – in their native language. A study as proposed here is a great idea – it’s just that the study should take place before new federal legislation is passed by Congress. This provision could be a great provision – perhaps the best provision of the entire Holt Bill. NIST does need to test and study all of the existing systems put into place as a result of HAVA, not just on accessibility grounds but on accuracy grounds as well. And NIST should be given adequate financial resources (the \$1 million authorized in the bill is a paltry sum and shows the lack of interest in really accomplishing anything by this provision) and time to accomplish this worthy goal. Congress should fund this provision by a substantial amount and wait to see what the results are before overturning our nation’s new election system.

- Pg. 11, Line 13 – Pg. 14, Line 25 – **This provision requiring the full and open public disclosure of all “source codes,” “object codes,” “voting system software and firmware” is perhaps the most dangerous and illogical portion of the Holt Bill.** It mandates for a system to be used in a federal election, “the appropriate election official” must file in an electronic manner with the U.S. Election Assistance Commission (“EAC”) all of this material. Incredibly, the EAC in turn must make those ballot programming files “available for inspection promptly upon request to any person.”
  - First, this provision forces the state election official to violate the confidentiality terms of the contract with its preferred vendor entered into pursuant to HAVA. An example is that in Mississippi, the state, via the Secretary of State and the Department of Information Technology Services, entered into a contract for the purchase of voting machines with Diebold and a separate contract with Saber for an elections management system which created our statewide voter registration list. Both of these contracts contain specific directives that all information concerning software is proprietary and can not be disclosed. This provision of the Holt Bill would mandate that Mississippi disclose this information to the EAC.
  - Second, this provision mandates the disclosure of all software codes, including those of commercial off-the-shelf software (“COTS”) which are presently exempt from the source code review. An example of this would be Microsoft Windows 2000 Server.
  - As noted, all elections software must be disclosed. Therefore, even U.S. Department of Defense (“DOD”) code used in relation to the existing Federal Voting Assistance Program (“FVAP”) is mandated to be disclosed, directly undermining the security of the DOD computer

systems. In other words, the appropriate state election official is required to disclose the DOD FVAP source code regardless of the type of election system used in the state.

- o Third, and most incredible, this provision – which is ostensibly designed to promote “security” – will provide to anyone who requests it the most secure information concerning the voting systems, thus ensuring that anyone with half a brain will be able to hack into the system and manipulate elections at will. It should be noted that there is a section of the bill – found at Pg. 13, Lines 5-10 – requiring the “manufacturer and the election officials” to certify the security of their voting systems, including “all software, hardware, vote storage media and ballots.” No election official or manufacturer will be able to do this. Why? Because the central software information which they must certify can be disclosed by the EAC to any person, be it political opportunist or international terrorist! **Mark it down -- this section guarantees fraud in our elections.** It should be noted that this requirement is applicable to all voting systems – not just DREs. Thus, all software and codes used to count the votes in optical scan systems must be disclosed to the EAC and then disclosed to anyone and everyone who requests them.
- o Finally, this provision requires the manufacturer to disclose to the “appropriate election official” “the identification of each individual who participated in the writing of the software.” This could involve the disclosure of hundreds, if not thousands, of individuals. In turn, the “appropriate election official” apparently must disclose this information to the EAC. This places an enormous administrative burden on the states and the EAC to collect this information. Undermining any security aspect of this provision is the fact that this section of the Holt Bill requires the disclosure of the most secure information – software source code – to any individual. Why bother collecting information on the developers if anyone can obtain the source codes anyway?
- Pg. 11, Lines 13-18 – This requirement mandates that a software certification process be established in each of the states. This is an additional unfunded federal mandate which places an extreme burden on the states which currently recognize and utilize the federal certification process. It unnecessarily duplicates an extensive proven, existing system.
- o Pg. 16, Lines 5-22 – In this provision, each state must ensure that “no voter will be unable to cast a ballot at a polling place due to a shortage or failure of voting equipment, ballots, or necessary supplies.” This could be interpreted to require a state to provide paper emergency/provisional ballots equal to the number of registered voters. The Holt Bill completely supersedes existing state laws (in our case, Miss. Code Ann. § 23-15-531.12) by mandating the use of emergency/provisional ballots in any cases where there is a “delay” in getting to

vote. There is no definition as to what is meant by “delay” – having to stand in line for 10 minutes? 5 minutes? Not being able to immediately walk up and vote? This places a huge financial and logistical burden on the states where the existing systems operated very well in 2006.

- Pg. 24, Lines 4 – 20 – This is the authorization of \$1 billion in funding to meet the voting system mandates of the Holt Bill. While certainly better than the initial \$300 million, it is impossible to rely on this provision. States were repeatedly told that it would be nearly impossible to appropriate the \$300 million this year – where would Congress find \$1 billion? This provision must also be viewed in the light of Congress’ failure to provide 3<sup>rd</sup> year HAVA funding of \$800 million.
- Pg. 29, Line 6 – Pg. 32, Line 2 – Provides for a waiver until 2010 for the states that were using reel-to-reel thermal paper voter-verified paper trails from meeting the new machine related requirements (prior sections) of the Holt Bill. This gives rise to a very real technological question – can any alternative to reel-to-reel voter verified paper trails be developed, tested, certified, and implemented within two years? Industry experts have advised the states that this is an impossible time frame for a major hardware change.
- Pg. 32, Line 3- Pg. 33, Line 14 – Creates a 42 U.S.C. §1983 private right of action against any state to enforce the provisions of the Holt Bill. This authorizes the possibility of endless federal litigation – with the potential recovery of attorney fees – between a state (including any election officials on any level) and any individual who feels aggrieved by an election process or procedure (or who has a private agenda he or she wishes to promote at public expense).
- Pg. 34, Line 10 – Pg. 36, Line 22 – This is perhaps the most audacious part of the Holt Bill. This federal act would create a new state bureaucracy – an “Election Audit Board” – which is required to conduct hand-counts of select precinct voting results. This seven (7) to thirteen (13) person Board is appointed by the “chief auditor” of the state (the state official who is responsible for conducting annual audits of the operations of state government, as certified by the state Attorney General based on state law) 60 days before each federal election (note that there is no requirement that the Board is appointed once even for one election cycle; thus, a different group may be appointed for a primary and a general federal election). Thus, this provision creates vast new power in the hands of the State Auditor over the election process – an individual who has no expertise in the area of elections or election systems. This single person – with so much unchecked power – can easily manipulate this power to suit his or her own goals or those of his or her party. There is absolutely no oversight of the State Auditor given to any other entity in this process. This provision usurps all existing state laws and makes the State Auditor the *de facto* chief election official of the state. The Board, too, need not have any election experience – only “professional experience in carrying out audits on an impartial basis.” Thus, the Holt Bill would permit a massive hand-count audit – with all the attendant subjective determinations which must be made

as to what is a vote – to be carried out by people who have no knowledge or experience in this area! This has the potential of being 100 times worse than the situation in Florida in 2000, where the election judges at least had some experience in their field! Three basic points: (1) Auditors know how to deal with financial records, not elections. (2) The National State Auditors Association has written a letter condemning this proposal. (3) This provision violates a fundamental rule of management: the person with the responsibility to do a job (in this case, the chief elections official) must have the authority to do the job.

- Pg. 36, Line 23 – Pg. 38, Line 23 – Establishes the percentage number of precincts to be audited based upon how close the percentage of victory is for the winning candidate. It should be noted that every election – no matter the margin of victory – will be required to undergo a hand-recount in at least three percent of the precincts.
- Pg. 39, Line 1 – Pg.42, Line 7 – This section sets forth the procedures to be used by the Board to conduct the mandatory hand-count audits. There is a very alarming caveat asserted in this section (Pg. 41, Lines 12-21) – if the Board finds that “any of the hand counts” “do not match the final unofficial tally of the results of an election, the Board shall administer hand counts under this section of such additional precincts (or equivalent jurisdictions) as the Board considers appropriate to resolve any concerns resulting from the audit.” This is amazing provision authorizes the Board – under the control of one single partisan individual, the State Auditor – to expand its audit into any other precincts it sees fit to audit to resolve any concern it may have.

*A hypothetical:* Senate Candidate Jefferson wins an election over Senate Candidate Adams by 40 percent (Jefferson – 70 percent, Adams – 30 percent). The State Auditor appoints a Board that just happens to consist of friends of Adams. They conduct an audit of the three percent of precincts mandated by the Holt Bill. In one (1) precinct, one (1) of the auditors discovers that one (1) vote was not properly counted. The Board – using this one (1) finding and this section of the Holt Bill – resolve to conduct a complete statewide hand-recount. The results could be catastrophic – what if the Board’s statewide hand-recount goes beyond January 1<sup>st</sup>, when the new Congress convenes? Mississippi has no certified winner of the general election because it cannot certify the winner until the Board completes its work (see next). A vacancy occurs in the office of Senator, and the Governor is allowed to appoint a Senator until a special election can be held. This despite the fact that Senate Candidate Jefferson clearly won the election by capturing 70 percent of the vote! Add one (1) additional hypothetical – what if the lonely auditor who discovered the one (1) vote “error” simply made a mistake – or fraudulently reported this alleged “error” where none existed?

- Pg. 44, Line 10 – Pg. 45, Line 10 – No election can be certified by the state until the Board completes its work and reports its results. With the exception of

Presidential elections (which must be reported by the deadline set by 3 U.S.C.A. § 6), there are no deadlines imposed upon the Board to complete its work, thus completely undercutting all state law certification deadlines. Indeed, the Board is only required to report its results after completion of its audit work "as soon as practicable." (Pg. 43, Lines 12 – 13). Again, this can prevent duly elected federal officials from taking office before Congress convenes, as well as prevent absentee balloting taking place with regard to military and overseas voters in compliance with the UOCAVA deadlines.

- Pg. 45, Line 11 – Pg. 46, Line 26 – The states will receive reimbursement for their costs involved in these mandated hand-count audits. This will cost the federal government billions of dollars every two years.

As can be seen from these comments, the Holt Bill undermines our democracy and drives the states backward to the 19<sup>th</sup> Century in elections systems and procedures. It directly undermines the valuable gains which have been made to ensure that all our citizens – regardless of status or station or disability – be given access to the ballot box in a meaningful way.

Instead, Congress should consider authorizing the EAC and NIST to conduct a thorough study of the systems the states put in place following HAVA. Once that study is completed, Congress then can contemplate – in a reasonable and judicious manner – an appropriate response, with the substantial input of election officials from every level of state government. And, hopefully, the nation will be in a better position to invest the necessary resources – both in development and implementation costs – to make the future dream of democracy a reality for all of our citizens.

The CHAIRMAN. I thank the gentleman. The question is on agreeing to the Ehlers substitute amendment to the Lofgren substitute. All of those in favor signify by saying "aye." All those opposed, "no." No. The noes have it.

Mr. EHLERS. I ask for a roll call.

The CHAIRMAN. The Clerk will call the roll.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Aye.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No. The amendment is not agreed to. The noes are 5, the ayes are 3. The amendment is not agreed to.

Mr. EHLERS. Not to be—Mr. Chairman. I have a number of amendments, individual amendments to the substitute, to offer.

The CHAIRMAN. Well, right now I need to recognize the gentleman from Texas.

Mr. GONZALEZ. Thank you very much Mr. Chairman. I do have an amendment to the substitute by Ms. Lofgren. And I ask for unanimous consent to consider it as read.

The CHAIRMAN. Without objection. Do they have a copy of the amendment? The gentleman from Texas is recognized for five minutes.

[The information follows:]

**AMENDMENT TO SUBSTITUTE****OFFERED BY MR. GONZALEZ****Gonzalez technical corrections**

In section 301(a)(11)(B)(ii) of the Help America Vote Act of 2002, as proposed to be added by section 2(c)(1) of the matter proposed to be inserted by the substitute, strike “the Commission” and insert “an accredited laboratory under section 231”.

In section 301(a)(11)(B) of the Help America Vote Act of 2002, as proposed to be added by section 2(c)(1) of the matter proposed to be inserted by the substitute, amend clause (iv) to read as follows:

- 1                   “(iv) At the request of the Commis-  
2                   sion—  
3                   “(I) the appropriate election offi-  
4                   cial shall submit information to the  
5                   Commission regarding the State’s  
6                   compliance with this subparagraph;  
7                   and  
8                   “(II) the manufacturer shall sub-  
9                   mit information to the Commission re-

2

1

garding the manufacturer's compli-

2

ance with this subparagraph.”

Mr. GONZALEZ. I did inquire of staff because I wanted to make sure that you had the amendments. My understanding is that they were distributed prior to the calling of order of the committee, but surely they are not available, let's go ahead, these are technical conforming—

The CHAIRMAN. Technical perfecting amendment.

Mr. GONZALEZ. Yes. If I could be recognized for a few minutes, maybe my explanation will be adequate or sufficient. I don't think that members on the minority side are going to find anything objectionable.

This amendment makes technical and conforming changes to ensure this bill is consistent and accurate. The first change ensures that we are consistent in making the independent testing agencies the escrow entities for voting software and not the Commission.

The Commission is listed on page 17 of the bill where it should read "laboratory accredited under section 231." The second change being made here is to include manufacturers in reporting security standards if requested by the Commission. On page 18, line 5, it should read "manufacturer or appropriate election official."

And as I said, these are just basically conforming and changes one amendment, two minor changes. There were inconsistencies, we were making reference to commissions and so on. I yield back, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. Yes. Ranking Member, Mr. Ehlers.

Mr. EHLERS. The gentleman from Texas indicated that the minority could not find anything wrong with this. He sorely underestimates us, but in the hope of speeding things along, I am prepared to accept the amendment.

Mr. GONZALEZ. Thank you very much.

The CHAIRMAN. The amendment then is accepted. The chairman now would like to recognize Mr. Capuano for offering an amendment to the Lofgren substitute.

First, we still need a vote on the Gonzalez amendment.

All those in favor, signify by saying "aye."

Aye.

Opposed, "no."

In the opinion of the Chair, the "ayes" have it.

So ordered, the amendment is agreed to. Mr. Capuano.

Mr. CAPUANO. Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. Mr. Capuano offered an amendment. Without objection the amendment is considered as read. The gentleman from Massachusetts is recognized for five minutes.

[The information follows:]

**AMENDMENT TO SUBSTITUTE**  
**OFFERED BY MR. CAPUANO**

In section 301(a)(12)(A)(i) of the Help America Vote Act of 2002, as proposed to be added by section 2(c)(1) of the matter proposed to be inserted by the substitute, strike “paragraph (13)” and insert “paragraph (13) and the paper ballots provided to voters under paragraph (14)”.

At the end of section 301(a) of the Help America Vote Act of 2002, as proposed to be amended by section 2(c)(1) of the matter proposed to be inserted by the substitute, add the following new paragraph:

1           “(14) MANDATORY AVAILABILITY OF PAPER  
2           BALLOTS AT POLLING PLACE.—  
3           “(A) REQUIRING BALLOTS TO BE OF-  
4           FERED AND PROVIDED.—The appropriate elec-  
5           tion official at each polling place in an election  
6           for Federal office shall offer each individual  
7           who is eligible to cast a vote in the election at  
8           the polling place the opportunity to cast the  
9           vote using a pre-printed paper ballot which the  
10          individual may mark by hand and which is not

1 produced by a direct recording electronic voting  
2 machine. If the individual accepts the offer to  
3 cast the vote using such a ballot, the official  
4 shall provide the individual with the ballot and  
5 the supplies necessary to mark the ballot, and  
6 shall ensure (to the greatest extent practicable)  
7 that the waiting period for the individual to  
8 cast a vote is not greater than the waiting pe-  
9 riod for an individual who does not agree to  
10 cast the vote using such a paper ballot under  
11 this paragraph.

12 “(B) TREATMENT OF BALLOT.—Any paper  
13 ballot which is cast by an individual under this  
14 paragraph shall be counted and otherwise treat-  
15 ed as a regular ballot for all purposes (includ-  
16 ing, to the greatest extent practicable, the dead-  
17 line for counting the ballot) and not as a provi-  
18 sional ballot, unless the individual casting the  
19 ballot would have otherwise been required to  
20 cast a provisional ballot if the individual had  
21 not accepted the offer to cast the vote using a  
22 paper ballot under this paragraph.

23 “(C) POSTING OF NOTICE.—The appro-  
24 priate election official shall ensure that at each  
25 polling place a notice is displayed prominently

1           which describes the obligation of the official to  
2           offer individuals the opportunity to cast votes  
3           using a pre-printed paper ballot under this  
4           paragraph.

5           “(D) TRAINING OF ELECTION OFFI-  
6           CIALS.—The chief State election official shall  
7           ensure that election officials at polling places in  
8           the State are aware of the requirements of this  
9           paragraph, including the requirement to display  
10          a notice under subparagraph (C), and are  
11          aware that it is a violation of the requirements  
12          of this title for an election official to fail to  
13          offer an individual the opportunity to cast a  
14          vote using a pre-printed paper ballot under this  
15          paragraph.

16          “(E) EXCEPTIONS.—This paragraph does  
17          not apply with respect to—

18                 “(i) a polling place at which each vot-  
19                 ing system used in the administration of  
20                 an election for Federal office uses only pre-  
21                 printed paper ballots which are marked by  
22                 hand and which are not produced by a di-  
23                 rect recording electronic voting machine  
24                 (other than a system used to meet the dis-

4

1 ability access requirements of paragraph  
2 (3); or

3 “(ii) a polling place in operation prior  
4 to the date of the election, but only with  
5 respect to days prior to the date of the  
6 election.

7 “(F) EFFECTIVE DATE.—This paragraph  
8 shall apply with respect to the regularly sched-  
9 uled general election for Federal office in No-  
10 vember 2010 and each succeeding election for  
11 Federal office.”.

Mr. CAPUANO. Mr. Chairman, this amendment simply allows voters to have a choice as opposed to having election officials have full control over the method of voting that a voter might wish to do.

It allows people who walk into the polling place to take whatever is offered, or to ask for a ballot that is capable of being handmarked. To me, this is an amendment that is already full of compromises for me. It does take into account some of the earlier voting provisions. It exempts them. It doesn't take effect until 2010. It does not deal with voting centers because personally, I wasn't familiar with voting centers, but I have no problem at all working to make sure that voting centers in the future be excluded from this.

For all intents and purposes, it renders the emergency provisions, the emergency provisions moot. And it does that by allowing every voter to make a decision and therefore requiring every polling place to have enough ballots to handle that. Provisions are not yet stricken by this. I have no problem with having discussions to not trying to be redundant. I don't think redundancy helps at all. And this amendment I think is very simple, very straightforward, and I would urge people to support it.

I yield back.

The CHAIRMAN. Any discussion? Ranking Member, Mr. Ehlers.

Mr. EHLERS. Mr. Chairman, I have reviewed the amendment again. I think it is an attempt to provide a clarification, and personally I have no objection, if you wish, to call for yeas and nays.

The CHAIRMAN. Mrs. Davis of California.

Mrs. DAVIS of California. Thank you, Mr. Chairman. Initially, I was very supportive of this because I think that at some of the hearings that we heard from people, it became clear that there is a choice for voters. And we wanted to be able to provide that, whether you know we used the word paper or plastic, but essentially, to be able to allow people who are concerned, have problems, whatever that may be to vote with paper. I was then concerned that we might disallow people who are voting early to do this because election centers would not be prepared to handle that, but I think that has been clarified in the amendment.

I think that it really does allow some choice. And I think over time, some of us will settle out because people will either choose to use the paper or they will have the confidence in whatever machines it is that they are using and they will be able to do what we are really doing here—focusing on the voter and encouraging an election system that has the confidence of people that are getting to the polls, so I appreciate that, Mr. Chairman, and I support it.

The CHAIRMAN. I thank the lady. Any other discussion? All those in favor of the Capuano amendment signify by saying "aye."

Aye.

Any opposed? So ordered, the amendment is agreed to.

We will move on to any other amendments?

Mr. EHLERS. Yes. Mr. Chairman, I have a whole series of amendments here. The first one is labeled Ehlers Number 1, requiring paper as the official ballot. What this amendment does is allow States to decide what the official ballot of record should be.

I think one of the flaws in the original bill, H.R. 811, as we have heard testimony from various governmental units, is that it insists

that the only ballot of record is the paper ballot. I think there have been substantial cases showing that paper, in and of itself, is not necessarily more reliable than other methods of voting. I think it should be up to the election officials to have the capability and the freedom to decide, based on the record of what they see and the results of the voting, to decide which of the ballot—which of the redundant system they are using is the more reliable in terms of recounting the election.

So this certainly clarifies that issue, removes the absolute nature of the statement. As I said before, the 2000 presidential recount in Florida proved that paper ballots were not the answer and that was the genesis of HAVA. The main reason the Nation moved from paper ballots to mechanical voting machines was because of rampant fraud associated with paper ballots and the problems with discerning voter intent. Paper ballots can be—and frequently were—lost, stolen, or damaged. Entire ballot boxes were lost, stolen or stuffed with counterfeit ballots. That was the origin of the development of the old lever-style voting machines to get away from the problems of paper. I think we should let the election officials decide which is the appropriate record to use when recounting in a particular election based on the state of the ballots, the state of the equipment and so forth. I urge the adoption of this amendment.

The CHAIRMAN. I thank the gentleman. Without objection, the amendment is considered as read. Any other discussion on the amendment? Yes. The gentleman from Alabama.

[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. EHLERS**

**Ehlers amendment #1**

In section 301(a)(2) of the Help America Vote Act of 2002, as proposed to be amended by section 2(a)(1) of the matter proposed to be inserted by the substitute, strike subparagraph (A)(iii) and subparagraph (B) and insert the following:

- 1                   “(B) MANUAL AUDIT CAPACITY.—
- 2                   “ (i) The permanent voter-verified
- 3                   paper ballot produced in accordance with
- 4                   subparagraph (A) shall be preserved—
- 5                   “ (I) in the case of votes cast at
- 6                   the polling place on the date of the
- 7                   election, within the polling place in
- 8                   the manner or method in which all
- 9                   other paper ballots are preserved
- 10                  within such polling place;
- 11                  “ (II) in the case of votes cast at
- 12                  the polling place prior to the date of
- 13                  the election or cast by mail, in a man-
- 14                  ner which is consistent with the man-

2

1           ner employed by the jurisdiction for  
2           preserving such ballots in general; or  
3           “(III) in the absence of either  
4           such manner or method, in a manner  
5           which is consistent with the manner  
6           employed by the jurisdiction for pre-  
7           serving paper ballots in general.  
8           “(ii) Each paper ballot produced pur-  
9           suant to subparagraph (A) shall be suit-  
10          able for a manual audit equivalent to that  
11          of a paper ballot voting system.”.

In section 401(c) of the Help America Vote Act of 2002, as proposed to be added by section 3 of the matter proposed to be inserted by the substitute, strike “the right to have the voter-verified paper ballot counted” and insert “the right to have the ballot counted”.

In section 321(a)(1) of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the matter proposed to be inserted by the substitute, strike “the voter-verified paper ballots required to be produced and preserved pursuant to section 301(a)(2)” and insert “the ballots”.

In section 322 of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the

matter proposed to be inserted by the substitute, strike “voter-verified paper ballots” each place it appears and insert “ballots”.

In section 323(a)(2) of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the matter proposed to be inserted by the substitute, strike “the voter-verified paper ballots required to be produced and preserved under section 301(a)(2)(A)” and insert “the ballots”.

In section 323(a)(3) of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the matter proposed to be inserted by the substitute, strike “the applicable voter-verified ballots required to be produced and preserved under section 301(a)(2)(A)” and insert “the ballots”.

In section 327(b) of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the matter proposed to be inserted by the substitute, strike “(including the requirement” and all that follows through “this subtitle”.

Mr. DAVIS of Alabama. Thank you Mr. Chairman. Mr. Ehlers, I would pose this question to you and then yield you your time to answer it. I assume when you crafted your amendment, you may have possibly expected that the Capuano amendment would not be successful. It has now been successful. It just passed by voice vote.

Can you reconcile your amendment with the Capuano amendment? It seems like from my standpoint, if the Capuano amendment gives the voter a choice that that is substantially undercut if the States could then come back and say we are going to ignore all paper ballots in adjudicating a recount, but I yield to you to answer that.

Mr. EHLERS. I will be happy to yield. I don't see a conflict here at all because it gives the local election officials the choice of which to use for the record. If for example they have allowed some people to use VVPAT, paper ballots, and there is no alternative, obviously they have to depend on those paper ballots for those individuals as the vote for the record. But the intent of the bill is to make certain there are two indicators of the intent of the elector so that we can determine precisely what the elector meant.

Mr. DAVIS of Alabama. Well, reclaiming my time. I am searching for the actual text of your amendment. If you have an extra copy of it, I would appreciate being given it versus just the executive summary of it. But if I am understanding the summary, it suggests that it would be up to a State to decide. But in the event of a recount, the State could choose something other than paper ballots. If I understand Mr. Capuano's amendment, the goal is to give a voter the option of making sure there is a paper trail. The only relevance of giving a voter that option would be that there was, in the event of a recount or in the event of a dispute, the availability of something more reliable than machines.

So it may be that we simply disagree about your amendment, but it would seem to me given Mr. Capuano's amendment now being included in the bill that you would take away or you would undercut the voter flexibility Mr. Capuano creates by allowing the States to in fact ignore those paper ballots.

Mr. EHLERS. No. They would not have that option. The intent here is that when there are two official records, whether it is a computer and a paper trail or whether it is some other alternative dual redundant record, which could be a computer with an additional server located alongside which verifies the votes, if there are two choices, let the State choose. If there is only one choice, if it is just the paper ballots that Mr. Capuano refers, that of course has to be the only option that the State or the local government can pick.

Mr. DAVIS of Alabama. In the interest of time, I will make this just my last observation. It would seem as a practical matter that if consistent with Mr. Capuano's amendment that there would always be in every jurisdiction a chunk of ballots that were paper ballots that would exist, perhaps in some there would be the overwhelming majority of the ballots that were cast. So as a practical matter, if I understand the point the ranking member is making, if there were an election recount or an election audit, it may create a very significant practical problem if the State were to decide to

use one mode of verification if a significant number of ballots were cast.

Mr. EHLERS. The State could never exclude ballots that were officially cast if that is the only ballot that was made. They could never do that.

Mr. DAVIS of Alabama. Okay. I will yield back, Mr. Chairman.

The CHAIRMAN. Thank you. Yes, the lady from California.

Ms. LOFGREN. I just wanted to—I am sorry that I had to briefly depart for a previously scheduled meeting. I did want to address the issue that I understand Mr. Ehlers raised in my absence, which is what machines are readily available now that meet the standards in the substitute. And that would be official optical scans and ballot marking devices, and I also understand that the question has been raised whether levers, the machines with the levers would be essentially outlawed under the substitute. And the answer to that is yes, they would be outlawed. However, only New York uses the levers, and the State of New York has itself outlawed the levers as of September of this year. H.R. 811—actually the substitute would actually not outlaw the levers until November of 2008. So I don't think New York would actually even be impacted since they have taken a step in advance of this. I think that the substitute does really nothing to advance our cause of transparency and voter recounts.

And you know years ago, I was visiting in Silicon Valley, and all the techies are very concerned, at least in the valley, who have talked to me, that we take a step such as is envisioned in the bill and in the substitute. And I remember one of the scientists told me—I said, well, mistakes can be made under any system, and that is true. I mean there can be mistakes on paper ballots. There can be mistakes on optical scans. There can be mistakes on machines. I mean, nothing is perfect, and we all know that. And he argued back to me, yes, but the mistakes can't all be skewed to one side as they could be in a voting machine. And that is really what underlies this issue. You can't hack a paper ballot. And you can hack a voting machine, and you need to have a paper ballot at least to prevent that from happening, and I think to do anything less is a mistake, and I don't question the gentleman's commitment or his good will. I just think that he is mistaken, and I thank the Chairman.

Mr. EHLERS. Would the gentlewoman yield?

The CHAIRMAN. We are going to get back to you. We have agreed to hold open any debate on your substitute until you got back. But right now we are on Mr. Ehlers' amendment No. 1. If we could do this, get through the amendments, and as I agreed to, we could go back and have our discussion with the substitute. I believe Mr. Ehlers' amendment No. 1 is up for—

Mr. GONZALEZ. Addressing Mr. Ehlers'—I guess—amendment No. 1. Mr. Ehlers, could you give me an example of what you are talking about here where there would be an election by the election official and determine what would be the official ballot? What constitutes the official ballot for the purpose of an audit or a recount, a real life experience that we could anticipate occurring?

Mr. EHLERS. Will the gentleman yield?

Mr. GONZALEZ. I am sorry. I yield to you. Yes, sir.

Mr. EHLERS. I thank you for yielding. This is not an amendment that is just coming out of the blue. This is in response to the requirement in H.R. 811 that in the case of two extremes the paper ballot is the ballot of record, period. The local community has no choice, the State has no choice and this amendment is simply to make it clear in the case of a dual record. The State and the locality upon examination of the two records can decide which is the most accurate and use that as the official recount. It is not a new concept. It is simply taking away the requirement that it has to be paper, that you can't consider the voting machine as—

Mr. GONZALEZ. Reclaiming my time, I guess what I am trying to get at is, if you could give me an example of where you have two competing ballots that either could be recognized as the official ballot. Are we talking something that is electronically computed? Or something that we have that is actually a—obviously the paper ballot? The reason that I pose that question is, if you are going to give an option to the election officials to basically defeat the very purpose of what we are doing, and that is a paper trail, but not just a paper trail but something that can be examined, quantified as being more reliable than that which cannot be, which would be something that would be a nonpaper ballot. See what I am getting at? I am just saying, I would like to know of an example that you could provide me because maybe I am missing the whole point of your amendment.

Mr. MCCARTHY. If the gentleman would yield.

Mr. GONZALEZ. And I would like to yield to Mr. Ehlers since it is his amendment.

Mr. EHLERS. Okay. Let me first respond, and then I hope you will also recognize Mr. McCarthy. You are assuming, as the bill does, that the paper trail is automatically the better record. Now we heard testimony before this committee from Cuyahoga County, Ohio that this is not true, that they did run an election where there was a paper ballot as well as the machine. The machine turned out to be far more accurate than the paper ballot. Now I am not saying this would be true in every case. I am just saying in a case where that is true and it is evident, isn't it foolish of us to say, I don't care if the machine is proven to be more accurate, why do you exclude—why do you require us to use a paper ballot?

So I am just giving the local election officials a choice. This is based on my strong feeling. Having served in local government, State government and Federal Government, I have discovered that not all wisdom resides in the Congress, and I think we ought to recognize the ability of the local election—

Mr. GONZALEZ. Reclaiming my time, I know that it is probably almost expired. But I think just an important point—obviously I was just informed in that particular aspect or that particular county, the paper roll jammed and you had certain problems. I think we start from the basic premise. And I know that we have a fundamental difference about it that we are insistent on the paper ballot. I think what you are doing is you are allowing an election official to frustrate the very purpose of what we are attempting to accomplish and, further, find ways and manners of making sure that the paper ballot does in fact establish something that is very clear and quantifiable. That is my fear and my concern or that you actually

put what we are trying to do here in jeopardy by—and I understand what you are saying, it is just the good faith of the election officials or so. But I can actually see where there would be a heck of a lot more mischief with that than if we say let's emphasize a quality paper ballot, a paper trail, because that is what brings us here today and this particular piece of legislation, and at this time I would yield back because I know—

Ms. LOFGREN. Would the gentleman yield?

Mr. GONZALEZ. I would yield to Ms. Lofgren.

Ms. LOFGREN. I would note to cite Cuyahoga County is pretty amazing since it is my understanding the election officials there were removed by the State because of irregularities and misconduct in the conduct of elections, and that has been widely reported in the press and I would yield back.

Mr. GONZALEZ. I yield back to the chairman. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. McCarthy.

Mr. MCCARTHY. If I could ask my questions, I guess. Referring to my friend from the other side asking for a specific example, during the hearings we did have an elected official from Ohio. It was a race this time, and it was close. I believe it was Deborah Pryce's race. It was a large county. It met all the criteria, all the matrix that you would want to see. And it went through with the State provision to have the recount. The interesting part that they brought up, they had electronic machine and they had the paper right there. When they went back and did the checking because that is what they have to do, the machine counted correctly. The paper—because you are using individuals there who have been trained but who aren't there all the time—jammed. So in this bill what Mr. Ehlers is saying and why he is offering the substitute, we are predetermining which one we look at. Even though in that case if this bill was to pass, the paper would be the correct answer even though we all knew it was wrong.

So all Mr. Ehlers is saying with the substitute, don't predetermine the winner in the process. Allow the elected official who is elected by the body or appointed to actually weigh that issue so they have the option. And I understand your argument from there, but in this case we would have legislated what was right and what was wrong even though in that case he pointed out it was wrong, and I can see human error, just like Ms. Lofgren talked about earlier. The more people touch it, the greater a chance that there is an error. When you are feeding these in, you can't have error. And double checking, doing the parallel test, they found the machine had counted correctly. The paper had counted wrong so they were having the verification on both—

Mr. GONZALEZ. Would the gentleman yield? Thank you very much. My understanding is you had a reel and it jammed and you had those problems. I believe and I could be wrong, and I will defer to Ms. Lofgren and to Mr. Ehlers who are very knowledgeable about every aspect of this particular piece of legislation, my understanding is that we are going to have paper ballots available for those that are going to be requesting them. So I don't see that situation that we now allude to as ever repeating itself. Because if they had a problem with the printout, with the roll, the reel or what-

ever, we are actually going to have available for use in those circumstances a printed ballot. It is my understanding that we are going to have something that would address that particular situation. So that if anything, we have now built into this whole voting process a more careful and deliberate way of arriving at a paper ballot that we can rely on so that we do avoid the problem that you just set out. I just think that really defeats the whole purpose of what we are trying to accomplish here with paper trail, paper ballot and reliability.

Mr. MCCARTHY. If I may yield back my time. The only thing I would state here is this is probably the problem where we are putting the cart before the horse. If we would debate the bill, maybe this would be a little clearer understanding, because in that instance you wouldn't have known the paper had jammed. Even though you do have paper and you have the paper ballot but the person was able then to go to the choice, what happens is only when the election was close did they go back, trigger an automatic evaluation. The election was close. That is when they realized that the paper count was not correct, but this legislation, if the answer is the way I read it, it says the paper is always right. The machine can never be right. And I would rather—instead of predetermining who the winner is, I would rather give that power to the elected officials who do this every day. And they could see from that instance, and that is in essence what the substitute, and let me yield my time to—

Mr. EHLERS. If the gentleman would yield here, let me just follow that up. First of all, machines don't always function perfectly. That is true of computers, and it is true of paper. I am not arguing that we make the computer the automatic one. I am saying just allow the election officials based on the records to decide which one is right. I think it is absurd to say well, the paper always has to be right. We already have examples where it is wrong. It is also so argued that the computer has to be right. But I don't understand the underlying assumption here that somehow the computer is always wrong.

Look, we sent out millions of Social Security checks every year. Our paychecks are run off by a computer. Right? I never even see it. It automatically goes into my bank account. Now I have a check because I can check it because—I wish I had more checks—but I could check my bank account and see that it was actually deposited correctly. The point is simply we trust computers for so many aspects of our lives. I think it is insane to have something that says the computer is automatically wrong.

Mr. DAVIS of Alabama. Would the gentleman yield for one point?

Mr. EHLERS. It is not my time.

Mr. DAVIS of Alabama. Would you yield for one quick observation?

Mr. MCCARTHY. Yes.

Mr. DAVIS of Alabama. Ultimately Mr. Gonzalez and I are making the same point. So I won't spend a lot more time on this, but I think, Mr. McCarthy, what you said perhaps unintentionally clarifies this debate. This side of the aisle, the supporters of this bill want to create a paper trail in every instance because this side of the aisle has made the judgment that that is, all things being

equal, the best, most provable, most empirical way of verifying whether a vote has been cast. The purpose of this amendment is to depart from that intent and to say to local election officials, you can choose a different mode, and that just seems crystal clear to me. That is your position and we have ours. But I don't think it is accurate to say that this is consistent with the intent to move toward a paper verification. It is not. It would allow the opposite of paper verification.

Mr. MCCARTHY. If I may yield back just for clarification.

The CHAIRMAN. I am not sure if there is time left.

Mr. MCCARTHY. Just to be short, maybe we are not clear because that is not our intention. All we are saying is you could have a paper trail and you can have a computer trail. In essence what you are saying, paper trail always, even in the instance when it jams, and this person got a hundred votes and the paper trail says—

Ms. LOFGREN. Would the gentleman yield?

The CHAIRMAN. The gentleman has no more time.

Ms. LOFGREN. Mr. Chairman.

The CHAIRMAN. We have nine amendments. We could do this back and forth forever.

Mr. LUNGREN. Mr. Chairman.

The CHAIRMAN. Yes, the gentleman from California.

Mr. LUNGREN. Mr. Chairman, I would just like to strike the last word. I come to this somewhat fresh.

The CHAIRMAN. You have 5 minutes.

Mr. LUNGREN. And I have been one that had been concerned when I come up to certain machines and, you know, I push my finger on it and I hope it registers it correctly. And initially I thought paper verification, man, that is the way to go. And maybe this is the essence of the difference here. Isn't what we really want is to have a redundancy, a redundant system that is independently verifiable so that you can compare one against the other to see if in fact there was the accuracy of the machine involved, not just go back and check the machine and its internal operations? That is what I understand what we are trying to do here. And we are, it seems to me, making the judgment that the only way to do that is by a paper trail, and I don't know if that is because we doubt technology or we think that the constituents need—the voters need to have something in their hands to prove to them that in fact that is the best way to verify.

Now, I am one of those who loves to have a check in my hand, loves to have a piece of paper in my hand. But at the same time, I recognize the world is changing and that we are going to paperless programs. And I just wonder whether it really does make sense. And this is not partisan on my part. I am trying to assure you. I want a redundancy. But does it make sense for us to pre-determine the redundancy has to be paper?

And I guess my question is a general one but then also a specific one. I understand—and maybe the gentlelady from California can correct me—but I understand in your substitute that you give a waiver to reel-to-reel paper, reel-to-reel machines for 2008?

Ms. LOFGREN. That is correct.

Mr. LUNGREN. And that is because—

Ms. LOFGREN. That is because some of the States, some of the localities have complained that their State legislatures might not be able to act in time, and we want to accommodate that, but since the gentleman has yielded—

Mr. LUNGREN. And I yield to the gentlelady.

Ms. LOFGREN. I think it is important to be clear about what the underlying bill says and what it doesn't say. It says—

Mr. LUNGREN. It would be very helpful.

Ms. LOFGREN [continuing]. In section 2(b)(1) that if there is an inconsistency between any electronic vote tallies and the vote tallies determined by counting by hand that the paper ballots shall prevail, as has been discussed. It goes on to say if it is demonstrated by clear and convincing evidence, as determined in accordance with the applicable standards in the jurisdiction involved in any recount, audit or contest of the result of the election, that paper ballots have been compromised by damage or mischief or otherwise and that a sufficient number of ballots have been so compromised that the result of the election should be changed, the determination of the appropriate remedy with respect to the election shall be made in accordance with the applicable State law. And so there is room for using commonsense in the case where the reel-to-reel, for example, jams, as we saw in one of our hearings. I would note also that in Ohio there was no parallel testing—I just wanted to correct the record on that—in the election contest previously referenced. The difference here I think is—and I don't want to talk about Florida 13 specifically because that is a separate committee that we belong to. But we do know that looking at that issue, there is nothing to recount. There is no paper ballots to recount. And that is the greatest argument I can find—

Mr. LUNGREN. Reclaiming my time, the gentlelady has just directed us to in the substitute actually goes to what the amendment offered by Mr. Ehlers is, and so therefore the gentlelady accepts the argument but is suggesting that you have taken care of that in your base substitute. That is, at times if there is proof that the paper ballot method is somehow insufficient, they can go to something else, is that correct?

Ms. LOFGREN. Not exactly.

Mr. LUNGREN. Oh.

Ms. LOFGREN. If it is demonstrated by clear and convincing evidence that the paper ballots have been compromised and that a sufficient number of the ballots have been so compromised that the results would have been changed, the determination of the remedy shall be made in accordance with applicable State law.

The CHAIRMAN. The gentleman's time is up. Anyone else? Question on the Ehlers amendment? All those in favor, signify by saying "aye." Any opposed? The noes have it. The amendment fails.

Mr. LUNGREN. Mr. Chairman, I have an amendment.

Mr. EHLERS. Could I have a recorded vote on that?

The CHAIRMAN. The gentleman asks for a recorded vote. Recorded vote on the Ehlers amendment No. 1.

The Clerk will call the roll.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.  
The CLERK. Mr. Gonzalez.  
Mr. GONZALEZ. No.  
The CLERK. Mrs. Davis of California.  
Mrs. DAVIS of California. No.  
The CLERK. Mr. Davis of Alabama.  
Mr. DAVIS of Alabama. No.  
The CLERK. Mr. Ehlers.  
Mr. EHLERS. Yes.  
The CLERK. Mr. Lungren.  
Mr. LUNGREN. Aye.  
The CLERK. Mr. McCarthy.  
Mr. MCCARTHY. Aye.  
The CLERK. Mr. Chairman.  
The CHAIRMAN. No.  
The noes are 6, the yeas are 3. The amendment fails.  
Mr. LUNGREN. Mr. Chairman, I have an amendment, Lungren  
No. 1.  
The CHAIRMAN. Lungren No. 1. Without objection, the amend-  
ment is considered read. I will now recognize the gentleman for five  
minutes.  
[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. DANIEL E. LUNGREN OF  
CALIFORNIA**

**Lungren amendment #1**

Add at the end of section 301(a)(12) of the Help America Vote Act of 2002, as proposed to be added by section 2(c)(1) of the matter proposed to be inserted by the substitute, the following new subparagraph:

1           “(C) EXCEPTION FOR CERTAIN REEL-TO-  
2           REEL SYSTEMS.—This paragraph does not  
3           apply with respect to ballots produced by a vot-  
4           ing system which used a thermal reel-to-reel  
5           paper ballot printer attached to a direct record-  
6           ing electronic voting machine and which was  
7           used for the administration of the regularly  
8           scheduled general election for Federal office  
9           held in November 2006.”.

Mr. LUNGREN. I thank the Chairman. This amendment I think—well, I hope is somewhat noncontroversial. It attempts to try and deal with a particular problem that occurred to me, and this amendment tries to deal with that problem. It would allow the States that currently use the direct recording electronic systems with the voter-verified paper audit trail that have thermal paper to continue to use these voting machines in Federal elections. It is my understanding that 27 States currently use DREs with reel-to-reel voter-verified paper audit trails. This bill would require that States junk these new voting machines after the 2008 election. I could find no compelling reason to require the States to replace these machines because DREs with voter-verified paper audit trails that use reel-to-reel thermal paper still provide the paper record that we are talking about. It seems to me this is the kind of thing that the election officials were complaining about. This would be a huge waste of taxpayer dollars to replace something that is working and that provides the paper auditable trail that is desired by the majority in this bill. State and local election administrators have advised members of the committee that an alternative to reel-to-reel voter-verified paper audit trails cannot be developed, tested, certified and implemented for the 2008 elections and there is some question, according to them, whether it would be available for the 2010 elections.

So this amendment would simply allow States to use these reel-to-reel voter-verified paper audit trails for the life of the machine. And as I understand it, that could be 10 to 15 years or until the State decides to purchase new equipment. This does not change the underlying premise of the bill, as I understand, brought to us by the majority. It does have the paper trail there established. It would save money even though I know we are promising that we are going to send the money down there. I think we ought to be realistic, there is always cost involved. And if this serves the purpose of what we were talking about, I would hope that we could adopt this amendment.

It does nothing to undercut the premise of the majority. It does nothing to undercut the idea of a paper trail. It allows the use of the machines that, as I understand it, have not proven to be problematic to this point. And that is the purpose of my amendment, and I think it is fairly simple and straightforward.

And with that, I would yield back the balance of my time.

The CHAIRMAN. I would like to thank the gentleman. The gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Mr. Chairman, I oppose the amendment. As referenced earlier by, I believe it was Mr. McCarthy, the reel-to-reel are not optimal technology. I mean, they can jam. They are not perfect. And the provision in the substitute that permits their use through the 2008 election is a compromise, really in deference to the county and State officials who said that they could not meet the 2008 deadline. But I think to ignore the problems that we are aware of forever would be a mistake, and that is why the substitute gives a waiver but actually says these machines need to have a durable paper trail that is readable and countable in the future. And I think that to adopt the gentleman's amendment, although I am sure it is well intentioned, would be a mistake, would

undermine the bill and the progress that we hope to make with it, which is why I oppose it, and I thank the gentleman for recognizing me.

The CHAIRMAN. Thank the lady. Any other discussion? The question is on the amendment? All those in favor of the Lungren amendment No. 1 signify by saying "aye." Any opposed?

Mr. LUNGREN. Recorded vote, please, Mr. Chairman.

The CHAIRMAN. Recorded vote is requested. Would the Clerk please call the roll?

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

[No response.]

The CLERK. Mr. Ehlers.

Mr. EHLERS. Yes.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No.

The noes are 5, the yeas are 3. The amendment fails.

Mr. MCCARTHY. Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. The Chair recognizes Mr. McCarthy.

Mr. MCCARTHY. This amendment—

The CHAIRMAN. I am sorry. Without objection, the amendment is considered as read, and you are recognized for five minutes. Which number is this?

Mr. MCCARTHY. No. 1.

The CHAIRMAN. No. 1. Thank you.

[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. MCCARTHY**

**McCarthy amendment #1**

Add at the end of section 301(d) of the Help America Vote Act of 2002, as proposed to be amended by section 2(e) of the matter proposed to be inserted by the substitute, the following new paragraph:

1           “(3) EXCEPTION FOR CERTAIN SYSTEMS USED  
2           AT EARLY VOTING SITES.—

3                   “(A) EXCEPTION.—The requirements of  
4           this section which are first imposed on a State  
5           and jurisdiction pursuant to the amendments  
6           made by section 2 of the Voter Confidence and  
7           Increased Accessibility Act of 2007 shall not  
8           apply with respect to a voting system used at  
9           an early voting site if the system was used for  
10          the administration of the regularly scheduled  
11          general election for Federal office held in No-  
12          vember 2006 and met the requirements of this  
13          section as in effect with respect to such elec-  
14          tion.

15                   “(B) EARLY VOTING SITES DESCRIBED.—  
16          For purposes of subparagraph (A), an ‘early

2

1 voting site' is a polling place at which individ-  
2 uals may cast ballots in an election for Federal  
3 office prior to the date of the election and  
4 which serves as a polling place for more than  
5 one precinct.”.

Mr. MCCARTHY. It is my understanding that they have all been numbered by name, hopefully everybody has it.

It is pretty straightforward. It allows States to continue to use the DRE for early voting and advanced voting. As many of us know, a lot of the States have moved up their voting such as Nevada and others to help when it comes to lines, to help in the process. And this allows them to use the DREs because they are necessary in urban areas to serve voters from anywhere within the county who wish to vote early at the voting locations. In some of these areas you can have 1,100 different ballot styles. And from this perspective, I believe it will help the individuals, it will shorten the lines, and one thing we found, a significant ballot printing and delivery problems for the optical scanners occurred in 2008, 2004, 2006. And as everybody moves their election up faster, with the presidential coming and the primary, I just think this gives an opportunity to mend into your bill to actually give some flexibility at the same time.

I yield back my time.

The CHAIRMAN. I thank the gentleman. Any discussion? The question is on the amendment? All those in favor signify by saying "aye". Any opposed? The noes have it.

Mr. MCCARTHY. I would ask for a roll call vote.

The CHAIRMAN. Roll call is requested. Would the Clerk please call the roll?

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

[No response.]

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Aye.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No.

The noes are 5, the yeas are 3. The amendment fails.

Mr. EHLERS. Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. Without objection, the amendment is considered as read and the Ranking Member is recognized for five minutes.

[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. EHLERS**

**Ehlers amendment #2**

Strike section 4 and insert the following:

1 **SEC. 4. REQUIRING AUDITS OF RESULTS OF ELECTIONS.**

2 (a) REQUIRING STATES TO ADMINISTER AUDITS IN  
3 ACCORDANCE WITH STATE PLAN.—Subtitle A of title III  
4 of the Help America Vote Act of 2002 (42 U.S.C. 15481  
5 et seq.) is amended by inserting after section 303 the fol-  
6 lowing new section:

7 **“SEC. 303A. AUDITS OF RESULTS OF ELECTIONS.**

8 “(a) REQUIRING STATES TO ADMINISTER AUDITS IN  
9 ACCORDANCE WITH STATE PLAN.—

10 “(1) IN GENERAL.—Each State shall admin-  
11 ister audits of the results of elections for Federal of-  
12 fice held in the State in accordance with a State  
13 audit plan which describes the entity responsible for  
14 administering the audits, the procedures for admin-  
15 istering the audits, and the rules for determining  
16 which elections will be subject to audits and the  
17 number of tabulation units in which the audits will  
18 occur.

1           “(2) TABULATION UNIT DEFINED.—In this sub-  
2           section, the term ‘tabulation unit’ means, with re-  
3           spect to an election, a unit established by the State  
4           prior to the election (such as a precinct, polling loca-  
5           tion, or particular type of voting device) in which the  
6           votes tabulated by the voting system used in the unit  
7           may be compared with the audit of the results of the  
8           ballots cast in the unit.

9           “(3) SUBMISSION OF PLAN TO COMMISSION.—  
10          Not later than January 1, 2009, the State shall sub-  
11          mit its initial State audit plan under this section to  
12          the Commission.

13          “(b) CERTIFICATION.—A State does not meet the re-  
14          quirements of this section unless the chief executive of the  
15          State and the chief election official of the State certify  
16          that the State audit plan provides for the fair and effective  
17          administration of audits under procedures that are trans-  
18          parent and open to the public.

19          “(c) EFFECTIVE DATE.—This section shall apply  
20          with respect to the regularly scheduled general elections  
21          for Federal office held in November 2010 and each suc-  
22          ceeding election for Federal office.”.

23          (b) AVAILABILITY OF ENFORCEMENT.—Section 401  
24          of such Act (42 U.S.C. 15511) is amended by striking

3

1 “sections 301, 302, and 303” and inserting “subtitle A  
2 of title III”.

3 (c) CLERICAL AMENDMENT.—The table of contents  
4 of such Act is amended by inserting after the item relating  
5 to section 303 the following:

“303A. Audits of results of elections.”.

Mr. EHLERS. Thank you, Mr. Chairman. This amendment is very straightforward. It strikes the audit provisions, which have been the most disturbing and difficult for the States and local governments to deal with. It strikes all of the other provisions, but it does not get rid of auditing. It allows the States to develop their own plan for auditing Federal elections. States will develop plans and get approval by their respective State auditors or equivalents and then submit their plan to the EAC. Election administrators are the ones who have to administer the changes and many of them have testified and sent letters testifying to the burdens and unintended consequences of the audit requirements in H.R. 811. I have alluded to that earlier in terms of the election officials who have talked to me. So the proposed audits will greatly interfere with the actions of the canvassers in deciding the final totals for local and State elections. With the testimony that we have received on this, this is not a good way to audit. They have better ways of doing it. We are happy to work with their State auditors to improve it if it needs improvement and submit their plan to the EAC.

I ask for approval of my audit provision change.

The CHAIRMAN. I thank the gentleman. The gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Mr. Chairman, I oppose the amendment, as the substitute actually deals with some of the issues raised by State officials relative to the audit. In the substitute the audit board has been removed but has been replaced with a requirement that the entity chosen by the State to conduct the audit satisfy the requirements of independence as set forth in the GAO's government accounting standards and also provides for an alternative, that States could instead use auditing procedures established by NIST, and I know the gentleman has great respect for, as do I. So I believe, however, that independent random audits are very important, and certainly in talking to local government officials in California they concur that a randomized audit is absolutely essential.

As the gentleman knows, I was a local government official for more years than I have been in Congress. I was on a board of supervisors in Santa Clara County for 14 years with responsibility for elections. We supervised and funded the registrar of voters in that fourth largest county in the State. And I would never, as a local official, have said that a randomized audit that was independent was somehow to be resisted.

So I think the amendment undercuts the bill, an important element of the bill. We have in the substitute change provisions of it to accommodate what we think are legitimate issues raised by State officials so that we do not unduly constrain the development of audits, but we need to have independence and I think the gentleman's amendment would undercut that.

And I thank the chairman for yielding to me.

The CHAIRMAN. Any other discussion on the Ehlers amendment No. 2? The question is on the amendment? All those in favor of the amendment signify by saying "aye." Any opposed signify by saying "no." The amendment fails. We ask for a recorded vote with a roll. Would the Clerk please call the roll?

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.  
Mr. CAPUANO. No.  
The CLERK. Mr. Gonzalez.  
[No response.]  
The CLERK. Mrs. Davis of California.  
Mrs. DAVIS of California. No.  
The CLERK. Mr. Davis of Alabama.  
Mr. DAVIS of Alabama. No.  
The CLERK. Mr. Ehlers.  
Mr. EHLERS. Aye.  
The CLERK. Mr. Lungren.  
Mr. LUNGREN. Aye.  
The CLERK. Mr. McCarthy.  
Mr. MCCARTHY. Aye.  
The CLERK. Mr. Chairman.  
The CHAIRMAN. No.  
The noes are 5, the yeas are 3. The amendment fails.  
Mr. LUNGREN. Mr. Chairman, I have Lungren No. 2, amendment  
No. 2 at the desk.  
The CHAIRMAN. The Chair recognizes the gentleman for five minutes. Without objection, the amendment is considered as read, Lungren No. 2.  
[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. DANIEL E. LUNGREN OF  
CALIFORNIA**

**Lungren amendment #2**

In clause (ii) of section 301(a)(3)(B) of the Help America Vote Act of 2002, as proposed to be amended by section 2(b)(1) of the matter proposed to be inserted by the substitute, strike “meet the requirements” and insert the following: “unless the voting system was used for the administration of the regularly scheduled general election for Federal office held in November 2006 and met the requirements of this paragraph as in effect with respect to such election, meet the requirements”.

Amend subparagraph (B) of section 301(a)(12) of the Help America Vote Act of 2002, as proposed to be added by section 2(e)(1) of the matter proposed to be inserted by the substitute, to read as follows:

1                   “(B) READABILITY REQUIREMENTS FOR  
2                   MACHINE-MARKED OR PRINTED PAPER BAL-  
3                   LOTS.—

4                   “(i) IN GENERAL.—All voter-verified  
5                   paper ballots completed by the voter

2

1 through the use of a marking or printing  
2 device shall be clearly readable by the voter  
3 without assistance (other than eyeglasses  
4 or other personal vision enhancing devices)  
5 and by a scanner or other device equipped  
6 for individuals with disabilities.

7 “(ii) EXCEPTION FOR PREVIOUSLY  
8 COMPLIANT VOTING SYSTEMS.—Clause (i)  
9 does not apply with respect to ballots pro-  
10 duced by a voting system used in an elec-  
11 tion for Federal office if the system was  
12 used for the administration of the regu-  
13 larly scheduled general election for Federal  
14 office held in November 2006 and met the  
15 requirements of paragraph (3) (relating to  
16 accessibility for individuals with disabil-  
17 ities) as in effect with respect to such elec-  
18 tion.”.

Mr. LUNGREN. Thank you very much, Mr. Chairman. This amendment deals with the question of disabled accessibility. As I mentioned earlier, when we had general debate the American Association of People With Disabilities, the Nation's largest cross-disability membership organization, has expressed their concerns about the impracticality of the implementation of this bill. While they take pains to laud the impact of HAVA, HAVA's requirement that all polling places have at least one accessible voting machine by 2006 because it has, in their words, resulted in significant improvements in voting access since the 2002 elections, they go on to say that they fear that the Nation might move backwards on accessible voting technology, not because that is the intent of the author of this bill or the substitute but rather because of the impracticality in implementing this bill in this way.

That is why I offer this amendment. This amendment would simply allow States to continue to use the DREs that meet the accessibility requirements under current HAVA law. This guarantees that the progress achieved under that law for the disabled community, as referenced in the letter from the President and CEO of AAPD would continue. Testimony before the committee indicates there still exists access problems with paper ballot and paper trails. Dr. Diane Golden, disability access and technology witness, stated the following, quote, there are two access problems that we have still got in existing products related to print. It is not going to work to have an accessible electronic vote record or ballot and an inaccessible paper one. You can just see the problem with that. It is clearly lack of equal access. And quote, when you add paper into the process, we certainly don't have equipment on the market readily available that delivers all of those access features when a paper ballot is involved.

Congressman Holt stated that, one, our legislation requires that there be a voter-verified paper ballot. Now what goes along with that we really don't specify. There is some accessibility issues that, you know, purely a paper system cannot help the voter with disabilities along with the process. And that is an admission by Congressman Holt that we have a problem here.

So it just seems to me that if we are going to require voter-verified paper audit trails, we should first ensure that it has accessibility standards for all disabled voters before requiring the States to purchase technology that does not now exist. I believe a paper option can still be offered for those who are disabled and want a paper backup and prefer to have assistance in the voting booth.

I understand the intent of the author of the underlying bill and the gentlelady from California with the substitute to try and somehow come to a reasonable compromise on this. I just fear that under the current terms of the bill that doesn't make it. I would just ask that there be serious consideration of my amendment so that we don't have an unintended consequence as a result of the terms of the bill that we pass.

And with that, I would yield back the balance of my time.

The CHAIRMAN. I thank the gentleman. Is there any other discussion on the amendment? The lady from California, Ms. Lofgren.

Ms. LOFGREN. I oppose the amendment. And as mentioned earlier, there is a grandfather clause through the next election for

those systems that have reel-to-reel. On page 7 of the substitute, starting at line six, there is also a provision requiring that the use of at least one voting system equipped for individuals with disabilities at each polling place that allows a voter to privately and to independently verify the individual durable paper ballot and ensures that the entire process is equipped for individuals with disabilities.

I will note that we worked very closely with the disability community in crafting the substitute, and I believe that it does address their very important issues, and the amendment is unnecessary and also redundant, and therefore I would oppose it.

The CHAIRMAN. Any other discussion? The question is on the amendment? All those in favor signify by saying "aye." Those against, "no." The noes have it.

Mr. LUNGREN. Recorded vote, please.

The CHAIRMAN. A recorded vote is requested. Would the Clerk please call the roll?

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

[No response.]

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Aye.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No.

The noes are 5, the yeas are 3. The amendment fails.

Mr. LUNGREN. Mr. Chairman, I have Lungren amendment 3 at the desk.

The CHAIRMAN. The Chair recognizes Mr. Lungren with amendment No. 3 at the desk. Without objection, the amendment is considered as read and I recognize the gentleman for five minutes.

[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. DANIEL E. LUNGREN OF  
CALIFORNIA**

**Lungren amendment #3**

In section 301(a) of the Help America Vote Act of 2002, as proposed to be amended by section 2(c)(1) of the matter proposed to be inserted by the substitute, strike paragraph (8) (relating to election-dedicated voting system technologies).

Mr. LUNGREN. Thank you, Mr. Chairman. This amendment goes to a very controversial part of this bill. It goes to the question of source code and the availability of the source code to a large number of potential parties. This amendment would strike the provisions in the bill relating to election dedicated software and source code disclosures.

As I read the bill, and I believe this is still true in the underlying substitute, it allows access of voting machine software to parties of a rather large universe. As I understand it, all someone would have to do is file a lawsuit, they would then be considered a party and they would have access to this information under the terms of this law. As I understand it, it would be both pre-election and post-election. As I understand it, there would be a requirement for disclosure—nondisclosure agreement to someone who successfully sought this information. However, I have looked in vain to find any provision in the bill before us that has an enforcement mechanism.

Now, I don't know, but I would think that we would want to protect intellectual property to a greater extent than that. A nondisclosure requirement that has no backup in terms of a penalty to someone who did disclose, either administratively or any other way, is not the way we normally look at important issues of intellectual property. As a matter of fact, we know we have international disputes with any number of our trading partners, and if we were to visit Taiwan or visit the People's Republic and they were to tell us, look, we are going to protect your intellectual property by requiring nondisclosure agreements under certain circumstances but there is no enforcement mechanism, I think we would be very, very upset.

These are crucial issues out there. I understand the importance of being able to check to make sure that machines have not been in any way tampered with, but I think this goes far too far. There are inherent security concerns and reservations about allowing a broad spectrum of parties, some of whom may not have real interests in the source code, to view sensitive and security-related voting machine equipment and software. And maybe I am mistaken on this, but I understand this is allowed pre-election as well as post-election under the terms of the bill. If we are concerned about securing something, maybe the last thing you want is individuals having access to these things prior to an election where they might be able to do testing to find out what the vulnerabilities are. I know that is not the intent of the gentlelady from California, but I have a concern that that could be the result, and particularly when we have no enforcement mechanisms in the underlying proposition before us.

So my amendment would strike the provision in the bill relating to the election dedicated software and source code disclosures, and I would hope to get support for my amendment.

The CHAIRMAN. Is there any discussion on the amendment?

Ms. LOFGREN. Mr. Chairman.

The CHAIRMAN. The lady from California, Ms. Lofgren.

Ms. LOFGREN. I oppose the amendment, and let me tell you why. I think there is no section of the substitute that I spent more personal hours on than this section, and to strike it would mean that no party or voter to—no party to litigation would ever be able to

have access to voting system technology and might never be able to find out whether votes were miscounted. Now the language in the substitute is crafted to provide protection needed to get access to the information while at the same time respecting the rights of third-party vendors and off-the-shelf software. The provision relating to nondisclosure agreements is one that I think provides the opportunity for penalty for disclosure when it comes to election specific software.

I would note that the section which begins on page 11 of the substitute and extends into page 16 of the substitute is one that was crafted with the input of technology companies, many of whom are in my congressional district in Silicon Valley, and that the language is not opposed by the Business Software Alliance. I am not going to pretend that any software company wants any disclosure. I understand they don't. But there is also a recognition that when there is election-specific software there is going to be a need in certain cases to have access to that software so that one can be assured as to what happened, and that is why we put these protections in place. I think that the provision is a balanced one that achieves its end, and I think the amendment simply striking it would lead us in the dark and would be a huge mistake, and I yield back. I thank the chairman for recognizing me.

The CHAIRMAN. I would like to recognize the gentleman from California, Mr. McCarthy.

Mr. MCCARTHY. Thank you, Mr. Chairman. I have a couple of questions for Mr. Lungren and then I would like to yield him some time as well. In your amendment you say strike it because you raised the issue about no penalty, that anybody could just go in and file a lawsuit that day and then get—I mean I could file a personal lawsuit currently as the bill is written?

Mr. LUNGREN. If the gentleman would yield.

Mr. MCCARTHY. I will yield.

Mr. LUNGREN. As I understand it, the definition of the bill is someone who has an interest—a party of interest would be anyone who filed a lawsuit involved in this issue, whether or not they succeeded in the lawsuit, whether or not the lawsuit was thrown out later on, as I read the bill.

Mr. MCCARTHY. And yours would—because there is no penalty as well. If someone goes in and signs that paperwork, I filed the lawsuit, I signed the paperwork, I get the source code. Is there any penalty if I do—

Mr. LUNGREN. Well, if the gentleman would yield. And the gentlelady from California can correct me if I am wrong. But I read through the bill and could not find, or referring to my bill, the staff did a good job of reading through the bill—I could not find a reference to the penalty attached even administratively, civilly, criminally, any otherwise.

Ms. LOFGREN. Would the gentleman yield?

Mr. LUNGREN. Yes.

Ms. LOFGREN. On that point, if you would look, I direct your attention to line 24 on page 13 on the nondisclosure agreements. The NDAs, what we decided would be prudent would be not to try to write the NDAs for the software companies. Let the companies write their own NDAs. Ordinarily—I have signed plenty of them—

there are penalty provisions for disclosure that would be included in the NDA itself. So it was really in deference to the variety of companies. But there are limits that are put into the bill on what the NDA could contain, for example—

Mr. MCCARTHY. If I may reclaim my time.

Ms. LOFGREN. Certainly.

Mr. MCCARTHY. So if I recall correctly here, what you are saying is we are giving it up to the companies to put out any penalty they want, and how would it be reinforced then, through the legal course there?

Mr. LUNGREN. If the gentleman would yield.

Mr. MCCARTHY. Yes.

Mr. LUNGREN. I understand what the gentlelady is saying, it is a nondisclosure agreement to be reached between the manufacturer or the possessor of the intellectual property and the person asking for it. But the fact that we don't specify any type of enforcement leaves that hanging out there. I would suggest that if one reads this bill, the impetus is to get this document or this information source code and other information out and for a company to stand there and say, look, we don't believe the nondisclosure agreement is sufficient to protect us, they will not be in a very strong position to do this. And I mean I would just say if the gentlelady is telling me that the high tech industry has signed off on this, this is news to me. And if that is the case, maybe on the Judiciary Committee we ought to understand they are not as concerned about source code protection as they have told us they are. And that is what I frankly find surprising, that somehow I am being told that they don't oppose it or they agree with it or they accept it.

Ms. LOFGREN. Would the gentleman yield?

Mr. LUNGREN. Before that, I would just say if I were their lawyer and I saw this legislation and I saw that I was required by the Federal Government to give this information up pursuant to a nondisclosure agreement and there are no elements of protection for me that is specified there, that this is the penalty if you fail to do this, I would recommend to my client that they get out of the business.

Ms. LOFGREN. Would the gentleman—

Mr. MCCARTHY. Reclaiming my time. If I could just ask you this question, it might be yielding the answer you want. You said the industry doesn't oppose it. Does the industry support it, this provision of the bill?

Ms. LOFGREN. If I may—

Mr. MCCARTHY. Yes.

Ms. LOFGREN. On page 15, line 1, the NDA is "silent as to damages," and on line 19, "provides the agreement shall be governed by the trade secret laws of the applicable State."

I am on the Intellectual Property Subcommittee of the Judiciary Committee and have been on that subcommittee for the past 12 years. I think this is very much in keeping with our tradition of protecting intellectual property. I would note also that this relates only to election dedicated voting system technology, which is—we tried to define it and finally realized it is already defined. And so we simply reference the definition under current law.

In terms of support, I will say that if you go to any industry and say, would you like to have a provision such as this? I mean they didn't ask for this. But in multiple meetings and really I don't know how many hours but many, many, we came to the point where the Business Software Alliance said that they do not oppose this.

Mr. MCCARTHY. They do not oppose it but they do not support it?

Ms. LOFGREN. I don't want to say they support it yet. I do not know. But they do not oppose the language that we have in this amendment.

Mr. MCCARTHY. Can I ask another question? You bringing up the subcommittee you serve on of the Judiciary, would this bill need to go through that committee as well?

The CHAIRMAN. We are getting close to time. I will let you go a little bit longer, but not much.

Ms. LOFGREN. I hope not.

Mr. MCCARTHY. Yield back my time.

The CHAIRMAN. Yes, sir. Mr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman. This is the part that bothers me the most. It just seems very strange to me. I don't know if the Business Software Alliance or Microsoft, et al., have taken leave of their senses. Considering the battles we have had just obtaining access to the source code thus far, but it has been obtained when it is appropriate. I am not even sure why we need this provision, but certainly I think it does incredible damage to the intellectual property laws of the country. I hate to think of how the Chinese might interpret this and say, well, this can apply to our case as well and it is okay if we violate the intellectual property laws. I think it is very strange, and I don't know if they were brow beaten into this or what. I think it is a very, very dangerous precedent for the high tech industry, especially the computing industry. Let me just ask if Mr. Lungren would like more time.

Mr. LUNGREN. If the gentleman would yield. Look, I think we want some of the best in the business to be involved in this. I think we want not just one person who is sitting out there to look at this. This is specialized software. I would hope that we would have—we would at least not set up a scenario where companies are afraid to get in this because their intellectual property can be so easily compromised. I think you have to look at that side of this. It is one of the purposes of intellectual property. It is to allow the great competition of ideas, but people knowing they have some value in that property, that is one of the toughest concepts we have in developing countries is to have them understand the concept of intellectual property as a thing, as a right, as something that you protect, as a property interest. It is not immediately ascertainable. After developing countries understand how they actually promote themselves and their industry with the protection of these rights, they all of a sudden start protecting intellectual property that comes from other countries because they hope to have theirs protected. And that is why if we hope to have some of the best companies in the world giving us the best, most reliable machines, it seems to me we should be very careful about that. That is why I offered the amendment.

Mr. EHLERS. Just reclaiming my time, I have a question for you, Mr. Lungren. You alluded earlier that this might stir the interest of the Judiciary Committee. Would you anticipate that this might trigger a referral of this bill to the Judiciary Committee?

Mr. LUNGREN. If I were in the majority I guess I could give you an answer. I would—well, it is intellectual property. It goes about enforcement, but traditionally at least it is something that we would look at in the Judiciary Committee and past chairmen have jealously guarded that, and Mr. Conyers is not known to be a wallflower.

Ms. LOFGREN. Would the gentleman yield on that point?

Mr. EHLERS. Yes, I will yield.

Ms. LOFGREN. I am advised the bill does not change any underlying intellectual property laws, and I am advised by someone who has checked with the Parliamentarian that it would not require a referral. And I thank the gentleman for yielding.

Mr. EHLERS. Let me just conclude by saying that I still have serious concerns about this. I think it is of great importance to the computer industry and that we should at least be very worried with that provision. With that, I yield back.

The CHAIRMAN. Thank you. Any other discussion? The question is on Lungren amendment No. 3. All those in favor signify by saying "aye." Any opposed say "no." The noes have it.

Mr. LUNGREN. Mr. Chairman, could I have a recorded vote on that, please?

The CHAIRMAN. Recorded vote is requested. Would the Clerk please call the roll?

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Yes.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No.

The noes are 6, the ayes are 3. The amendment fails.

Mr. MCCARTHY. Mr. Chairman, I have an amendment at the desk, McCarthy Number 2.

The CHAIRMAN. McCarthy Number 2, without objection, the amendment is considered as read and the gentleman is recognized for five minutes.

[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. MCCARTHY**

**McCarthy amendment #2**

Insert after section 5 of the matter proposed to be inserted by the substitute the following (and redesignate the succeeding provision accordingly):

1 **SEC. 6. REQUIRING VOTERS TO PROVIDE PHOTO IDENTIFICATION.**  
2

3 (a) REQUIREMENT TO PROVIDE PHOTO IDENTIFICATION AS CONDITION OF RECEIVING BALLOT.—  
4

5 (1) REQUIREMENT TO PROVIDE PHOTO IDENTIFICATION AS CONDITION OF RECEIVING BALLOT.—  
6

7 Section 303(b) of the Help America Vote Act of  
8 2002 (42 U.S.C. 15483(b)) is amended—

9 (A) in the heading, by striking “FOR VOTERS WHO REGISTER BY MAIL” and inserting  
10 “FOR PROVIDING PHOTO IDENTIFICATION”;  
11 and  
12

13 (B) by striking paragraphs (1) through (3) and inserting the following:  
14

15 “(1) INDIVIDUALS VOTING IN PERSON.—

16 “(A) REQUIREMENT TO PROVIDE IDENTIFICATION.—Notwithstanding any other provi-  
17

1           sion of law and except as provided in subpara-  
2           graph (B), the appropriate State or local elec-  
3           tion official may not provide a ballot for an  
4           election for Federal office to an individual who  
5           desires to vote in person unless the individual  
6           presents to the official a government-issued,  
7           current, and valid photo identification.

8           “(B) AVAILABILITY OF PROVISIONAL BAL-  
9           LOT.—If an individual does not present the  
10          identification required under subparagraph (A),  
11          the individual shall be permitted to cast a provi-  
12          sional ballot with respect to the election under  
13          section 302(a), except that the appropriate  
14          State or local election official may not make a  
15          determination under section 302(a)(4) that the  
16          individual is eligible under State law to vote in  
17          the election unless the individual presents the  
18          identification required under subparagraph (A)  
19          to the official not later than 48 hours after  
20          casting the provisional ballot.

21          “(2) INDIVIDUALS VOTING OTHER THAN IN  
22          PERSON.—

23                 “(A) IN GENERAL.—Notwithstanding any  
24                 other provision of law and except as provided in  
25                 subparagraph (B), the appropriate State or

1 local election official may not accept any ballot  
2 for an election for Federal office provided by an  
3 individual who votes other than in person unless  
4 the individual submits with the ballot a copy of  
5 a government-issued, current, and valid photo  
6 identification.

7 “(B) EXCEPTION FOR OVERSEAS MILITARY  
8 VOTERS.—Subparagraph (A) does not apply  
9 with respect to a ballot provided by an absent  
10 uniformed services voter who, by reason of ac-  
11 tive duty or service, is absent from the United  
12 States on the date of the election involved. In  
13 this subparagraph, the term ‘absent uniformed  
14 services voter’ has the meaning given such term  
15 in section 107(1) of the Uniformed and Over-  
16 seas Citizens Absentee Voting Act (42 U.S.C.  
17 1973ff—6(1)), other than an individual de-  
18 scribed in section 107(1)(C) of such Act.

19 “(3) SPECIFIC REQUIREMENTS FOR GOVERN-  
20 MENT ISSUE.—For purposes of paragraphs (1) and  
21 (2), an identification is ‘government-issued’ if it is  
22 issued by the Federal Government or by the govern-  
23 ment of a State.”.

24 (2) CONFORMING AMENDMENTS.—Section 303  
25 of such Act (42 U.S.C. 15483) is amended—

1 (A) in the heading, by striking “**FOR VOT-**  
2 **ERS WHO REGISTER BY MAIL**” and inserting  
3 “**FOR PROVIDING PHOTO IDENTIFICA-**  
4 **TION**”; and

5 (B) in subsection (e), by striking “sub-  
6 sections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II)”  
7 and inserting “subsection (a)(5)(A)(i)(II)”.

8 (3) CLERICAL AMENDMENT.—The table of con-  
9 tents of such Act is amended by amending the item  
10 relating to section 303 to read as follows:

“Sec. 303. Computerized statewide voter registration list requirements and re-  
quirements for providing photo identification.”.

11 (4) EFFECTIVE DATE.—

12 (A) IN GENERAL.—This subsection and the  
13 amendments made by this subsection shall  
14 apply with respect to the regularly scheduled  
15 general election for Federal office held in No-  
16 vember 2010 and each subsequent election for  
17 Federal office.

18 (B) CONFORMING AMENDMENT.—Section  
19 303(d)(2) of such Act (42 U.S.C. 15483(d)(2))  
20 is amended to read as follows:

21 “(2) REQUIREMENT TO PROVIDE PHOTO IDEN-  
22 TIFICATION.—Paragraphs (1) and (2) of subsection  
23 (b) shall apply with respect to the regularly sched-  
24 uled general election for Federal office held in No-

1 vember 2010 and each subsequent election for Fed-  
2 eral office.”.

3 (b) MAKING PHOTO IDENTIFICATIONS AVAILABLE.—

4 (1) REQUIRING STATES TO MAKE IDENTIFICA-  
5 TION AVAILABLE.—Section 303(b) of such Act (42  
6 U.S.C. 15483(b)), as amended by subsection  
7 (a)(1)(B), is amended—

8 (A) by redesignating paragraphs (4) and  
9 (5) as paragraphs (5) and (6); and

10 (B) by inserting after paragraph (3) the  
11 following new paragraph:

12 “(4) MAKING PHOTO IDENTIFICATIONS AVAIL-  
13 ABLE.—

14 “(A) IN GENERAL.—During fiscal year  
15 2010 and each succeeding fiscal year, each  
16 State shall establish a program to provide photo  
17 identifications which may be used to meet the  
18 requirements of paragraphs (1) and (2) by indi-  
19 viduals who desire to vote in elections held in  
20 the State but who do not otherwise possess a  
21 government-issued photo identification.

22 “(B) IDENTIFICATIONS PROVIDED AT NO  
23 COST TO INDIGENT INDIVIDUALS.—If a State  
24 charges an individual a fee for providing a

1 photo identification under the program estab-  
2 lished under subparagraph (A)—

3 “(i) the fee charged may not exceed  
4 the reasonable cost to the State of pro-  
5 viding the identification to the individual;  
6 and

7 “(ii) the State may not charge a fee  
8 to any individual who provides an attesta-  
9 tion that the individual is unable to afford  
10 the fee.

11 “(C) IDENTIFICATIONS NOT TO BE USED  
12 FOR OTHER PURPOSES.—Any photo identifica-  
13 tion provided under the program established  
14 under subparagraph (A) may not serve as a  
15 government-issued photo identification for pur-  
16 poses of any program or function of a State or  
17 local government other than the administration  
18 of elections.”.

19 (2) PAYMENTS TO STATES TO COVER COSTS.—  
20 Subtitle D of title II of such Act (42 U.S.C. 15321  
21 et seq.), as amended by section 2(e)(4)(A), is further  
22 amended by adding at the end the following new  
23 part:

1 **“PART 8—PAYMENTS TO COVER COSTS OF PRO-**  
2 **VIDING PHOTO IDENTIFICATIONS TO INDI-**  
3 **GEN T INDIVIDUALS**

4 **“SEC. 298. PAYMENTS TO COVER COSTS TO STATES OF PRO-**  
5 **VIDING PHOTO IDENTIFICATIONS FOR VOT-**  
6 **ING TO INDIGENT INDIVIDUALS.**

7 “(a) **PAYMENTS TO STATES.**—The Commission shall  
8 make payments to States to cover the costs incurred in  
9 providing photo identifications under the program estab-  
10 lished under section 303(b)(4) to individuals who are un-  
11 able to afford the fee that would otherwise be charged  
12 under the program.

13 “(b) **AMOUNT OF PAYMENT.**—The amount of the  
14 payment made to a State under this part for any year  
15 shall be equal to the amount of fees which would have  
16 been collected by the State during the year under the pro-  
17 gram established under section 303(b)(4) but for the ap-  
18 plication of section 303(b)(4)(B)(ii), as determined on the  
19 basis of information furnished to the Commission by the  
20 State at such time and in such form as the Commission  
21 may require.

22 **“SEC. 298A. AUTHORIZATION OF APPROPRIATIONS.**

23 “There are authorized to be appropriated for pay-  
24 ments under this part such sums as may be necessary for  
25 fiscal year 2010 and each succeeding fiscal year.”.

1           (3) CLERICAL AMENDMENT.—The table of con-  
2           tents of such Act, as amended by section 2(c)(4)(B),  
3           is further amended by adding at the end of the  
4           items relating to subtitle D of title II the following:

                  “PART 8—PAYMENTS TO COVER COSTS OF PROVIDING PHOTO  
                  IDENTIFICATIONS TO INDIGENT INDIVIDUALS

                  “Sec. 298. Payments to cover costs to States of providing photo identifications  
                  for voting to indigent individuals.

                  “Sec. 298A. Authorization of appropriations.”.

5           (4) EFFECTIVE DATE.—This subsection and the  
6           amendments made by this subsection shall take ef-  
7           fect October 1, 2009.

Mr. MCCARTHY. I thank you, Mr. Chairman. This amendment comes directly from our hearings. The one thing we talked about in the name of this bill is voter confidence. We are talking about auditing the election, having the ability to know that the election, the outcome, is what took place. And that means auditing it all the way through.

And in our hearings, one of the individuals talked about from all of the different stages. And it dawned on me at that moment, at that time, that we are auditing those votes that have been voted, but we have never put the confidence back into the people who were allowed to vote, do we ever look at, do they have the right to vote?

The outcome may—the votes may tabulate, be correct, of those who voted but we never looked at, for the confidence part of that. So what this amendment does, effective 2010, voters will be required to provide a photo ID much like every week when I get on the airplane, I show my ID. If I were to go to a store and purchase cigarettes or alcohol I show an ID. Effective 2010, voters who arrive at polling places without the required ID will be given a provisional ballot. And there will be 48 hours to present a qualifying ID. Effective 2010, people voting by mail must include a photocopy of a photo ID. The bill states to set up a program to distribute the IDs and provide them at no cost to the individuals. Funds are authorized to reimburse the states for the costs of providing free IDs. I believe IDs will preserve and bring integrity back to elections, and actually go to the heart of what this bill says, the confidence in the voters. If you are going to audit an election, but you are never going to audit whether the individuals could vote or not, how do you know you have the right outcome?

And I will tell you there is broad support for this. It is really common sense. In a recent NBC Wall Street Journal poll, demonstrated that 81 percent of the people surveyed expressed supporting requiring IDs at the polls. The bipartisan Carter-Baker Commission on Federal Election Reforms have recommended that we require IDs at the polls. I really believe this goes to the heart of it, that if we are to move this bill, the first thing we should do is the ID portion of it.

And the bell rang, so I give back the balance of my time.

Mr. DAVIS of Alabama. Mr. Chairman, can I weigh in on that or do you want to recess?

The CHAIRMAN. Sure. The Chair recognizes Mr. Davis from Alabama.

Mr. DAVIS of Alabama. I have a little bit of experience on this, Mr. McCarthy, being from Alabama and the south, a number of these southern States have these photo ID provisions. They sound seductive for the reasons that you outline, but there is a big practical problem with them. The folks in our society who do not have a photo ID tend to have the following characteristics, they tend to be very old, they tend to be very poor, and they tend to be blacks or Hispanics.

And there are all kinds of reasons those four eventualities occur, but that is just the empirical fact. So if you impose any kind of voter ID, the result is that you strike at groups of vulnerable peo-

ple who often participate at lower levels than they should in the political process.

And there is another core problem, and by the way, that is what a number of courts have found. As you know, there have been a number of challenges to voter ID provisions on Voter Rights Act grounds and courts have tended to find that there are significant implications with respect to the Voters Act.

There is another issue we are talking about legislation that aims at practical wrongs that exist. I am on the Judiciary Committee, which I served on with Ms. Lofgren and Mr. Lungren, we had an individual from the Department of Justice and I remember posing a query to that individual about the number of prosecutions that have happened in this country involving individuals who walk into a voting booth who claim to be someone that they are not. And the number is negligible. The number of elections that we have had in this country where there has been some taint or some evidence of corruption based on people walking in claiming to be John Jones when they are not John Jones is just a negligible number.

On the other hand we have had, as we know from the Florida race, as we know from Ohio, as we know from the Florida presidential and congressional races in 2001 and 2006, as we know, are the Ohio race in 2004, there have been, whenever we think of the outcomes of those races, all kinds of questions raised around other aspects of the electoral process. So while this legislation sounds good, as a practical matter it aims at a problem that doesn't exist and it singles out a vulnerable class of voters. So I would yield to Ms. Lofgren.

Ms. LOFGREN. Thank you for yielding. And I would just add, this is something that I think the Election Subcommittee is going to take a look at later in the year because there has been so much discussion about it. But I will say this, people often say, well, you have to show ID to buy a beer, but you know a beer is not a constitutional right. We know that substantial numbers of American citizens do not actually have a photo ID. And in fact, we had hearings—and Mr. Ehlers was present at one of the hearings I attended, I believe, in New Mexico. We heard from the Navajo Nation—and it is about 250,000 Americans. And indeed, they are the first Americans. And we were told by their leadership that they basically don't have photo IDs, and when we were having that hearing, the gentleman, who was a wonderful representative of his tribe said, you know, don't ask us for birth certificates because we don't have them. And don't ask us for utility bills because we don't have those either.

So essentially, a photo ID imposition for voting would essentially say to a quarter million Navajos, our first Americans, you are not allowed to vote.

I want to say also that the other studies we have heard about in the committee seem to indicate that there would be an enormously disproportionate adverse impact on people who are poor and people who are minorities. In fact, one of the studies that we learned about last Congress was in Wisconsin—I was stunned to see this—that a huge percentage, over somewhere in the neighborhood of half—of the African American young men between the ages of 19 and 26 don't have a driver's license and do not have a photo

ID and cannot get one. I would note also that the Eagleton studies that was sponsored by the Election Assistance Commission, I would say rather cynically, suppressed and even distorted—and that is another thing we are going to look into later this year—indicated that there would be a disproportionate adverse impact on minorities with this voter ID impact, and it also pointed out there is virtually no evidence that there is fraudulent voting, and the Justice Department has shown that also through their lack of prosecutions.

I think this is a very poor amendment. It would have a very, I am not sure not intended, but adverse civil rights impact and should be vigorously opposed. And I know the time of the gentleman has expired.

The CHAIRMAN. I would like to recognize Mr. Capuano from Massachusetts hopefully for a very brief comment so we can vote on this amendment and then go and come back again.

Mr. LUNGREN. Mr. Chairman, I would wish to discuss it too.

The CHAIRMAN. Go ahead.

Mr. CAPUANO. Mr. Chairman, I won't vote for this amendment. I don't care how long any subcommittee looks at this issue. I won't vote to require Americans to carry IDs unless there is a need for that requirement. It is basic civil liberties. I kind of feel like the roles have been reversed here. It used to be that the right didn't like the Federal Government telling people to carry IDs, apparently now it is the left. I am the left and I don't want it.

And this proposal, first of all, is I haven't had anything to say on the other amendments. They are all on point. They all have some reasonable purpose to say it. This is a whole other issue. This is basic civil liberties. Have all the hearings you want. There is no way that I would ever vote to require Americans to carry an ID and show it to anybody unless there is some clear and unequivocal need and purpose for the society.

There is no allegations by anybody that I have heard of widespread voter fraud. People already have the ability if there is some known reason to ask somebody if you are really who you say you are. You can already do it in a voting place. And this is an incredibly slippery slope. What is next? Showing an ID and requiring certain information to buy a gun? Oh no, we can't do that, can't never do that. But this is okay.

This is ridiculous. This goes to the basis of civil liberties here in America. The last time they tried this to require National IDs was in Nazi Germany in World War II. Didn't work there and not going to work here.

The CHAIRMAN. Maybe we should recess and come back and I will recognize you when we come back. We will have a brief recess we have three votes on the floor and then we will return. Thank you.

[Recess.]

Mr. CHAIRMAN. I would like to call our Committee back to order. I believe we were on McCarthy Number 2. I think that Mr. Lungren had his light on and he agreed to hold off until we got back, so I now recognize Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman. Mr. Chairman I understand that some people get very exercised over this but frankly to

suggest that this amendment is somehow anti civil rights is, I think, a little extreme.

Let's remember what the Carter-Baker Commission said.

The Carter-Baker Commission said to make sure that a person arriving at a polling site is the same one who is named on the list we propose a uniform system of voter ID based on the real ID card or an equivalent for people without a driver's license. The Commission noted specifically that there is likely to be less discrimination against minorities if there is a uniform ID than if poll workers can apply multiple standards.

In fact, Andrew Young, former U.N. Ambassador and mayor of Atlanta, supports the photo ID requirement.

Now the suggestion is that somehow we will have or discriminate against certain peoples, that somehow it will diminish or depress voter turnout. Well, voters in nearly 100 democracies around the world use a photo ID card without fear of infringement on their rights. That is the language of the Commission.

Let's take our closest country to the south. In Mexico, strict anti fraud regulations in voting have actually increased voter turnout. Three Mexican presidential elections since the photo ID reforms were implemented in 1991, 68 percent of eligible voters voted compared with only 59 percent in the three elections prior to the rules change.

The Mexican ID program is far more than what we suggest here. It includes multiple security features, a hologram, special fluorescent ink, a bar code, special codes and magnetic strip. And it appears that where people have greater confidence in the election process there is greater rather than lesser participation.

One of the big issues now on the front pages of the newspapers, on television every night in my last town hall people talked about this, it is identity theft. People are concerned about people using their identity to gain some sort of advantage, to gain some sort of benefit, in some cases to raid their personal bank account.

Here we are talking about the essence of democracy, which is, that people have the right to vote, but your vote and my vote is diminished if someone who doesn't have that right to vote votes. And I don't understand why, when we are concerned about the integrity of the system we are so afraid to deal with this issue and come up with arguments that suggest it is going to be oppressive against certain individuals.

As I say, Mexico has this card system. Canada has a system in which you get a ticket in the mail after registering and you have to bring that to the voting place. In the Netherlands you need a passport or driver's license to be presented. In Brazil, you need a picture ID to be presented.

And for the life of me, I don't understand when we are trying to make sure that the person who is voting is the person who is supposed to vote, that we somehow say that is an infringement on their rights.

Now, the suggestion has been made that we don't have a whole lot of examples of this. I recall when we tried to investigate it in California when I was attorney general, the lack of proof is there because you have no means of showing at the poll that someone is someone other than what they who they say to be. And if you sug-

gest that someone stand outside with a sign that says only if you are a citizen can you vote, that can be viewed as voter intimidation whereas, if, in fact, you require everybody to present a photo ID at the time that they vote, everybody is treated the same. Every single one of us is treated the same.

And so at a time and place where we are worried about identity theft, why aren't we worried about identity theft for that most precious of gifts that you have as a citizen of the United States, the gift and the responsibility to vote? And so, I just don't understand when we are so concerned about a paper trail making sure that it properly records votes, we are not concerned in the first instance with who it is that is voting.

And so I wish that we would not view this as an effort to diminish voter participation that somehow it is aimed at one group or another. If that were true, Mexico, last time I checked, is not as wealthy a country as we are, maybe I am wrong on that—has far greater poverty than we have, and yet, they have greater participation in voting since they have had this identification and one—and perhaps for one great reason, it instilled a greater confidence in the integrity of their system than they had before. Is it perfect? Of course it is not perfect. But is it better because of this? Yes, it is. And I would hope that we would seriously look at the gentleman's amendment and adopt it.

The CHAIRMAN. Thank the gentleman. Mrs. Davis of California.

Mrs. DAVIS of California. Thank you, Mr. Chairman. I was hoping if I could have the author address the issue of absentee voting and how you see that. I see the language that you have here. How would you—how do you see that in terms of absentee voting?

Mr. MCCARTHY. You have the ability to send in a photocopy. Libraries have copy machines, others you are providing when I did it by mail, absentee voting, I have it there for a number of days, I can go to a Kinko's, to other places, just photocopy my ID and send it in.

Mrs. DAVIS of California. And how do we verify that is you?

Mr. MCCARTHY. When you sign—when you vote for absentee you sign on it. If I worked for this committee and we had one contested race. When you turn it in you sign on the card itself and they—when they get it into the election office, they identify your signature based upon your voter registration.

Mrs. DAVIS of California. I am familiar how they do that. I have checked those. But I am also trying to get at the whole issue of do we know it is that person?

Mr. MCCARTHY. We will know more than we know today.

Mrs. DAVIS of California. I have to sign my name alongside my registration at the precinct itself and so for many people obviously they have been voting at the same precinct for years, people know them, they don't have to have an ID.

Mr. MCCARTHY. You don't have to have an ID today.

Mrs. DAVIS of California. You don't have to have an ID, but people know you are signing your name and they have that verification. But if you are voting in absentee voting—I happen to be very supportive of absentee voting—but I also think that in some ways, we set up kind of an unequal system here because and it is possible for someone to Xerox somebody else's license, of

course, if they are choosing to, if somebody wants to engage in fraud—

Mr. MCCARTHY. If the gentlelady would yield.

Mrs. DAVIS of California. We can't prove that.

Mr. MCCARTHY. When you sign, when you go in and vote in person, never does the election department check that signature if it was really you who voted. When you vote by absentee before that vote is counted, they check that signature. So the absentee vote is actually checked more than the person going forward. So when you send in that absentee vote and photocopy ID it is checked whether that signature is correct before they open the ballot.

Inside when you go to vote, you sign the book. But that is never checked unless there is a problem. So you have greater checks and balance in absentee in vote by mail than you do any other way.

Mrs. DAVIS of California. In your system then when you are asking for people to go to the trouble, if you will, of trying to find a way to Xerox whether it is a license or any other kind of ID that that would really be an important—

Mr. MCCARTHY. I understand the debate from the other side, but I do believe we live in a society where we show our IDs many times. We all just used our ID just to vote. I believe this is capable of doing. And the name of this bill is the ability that we are going to bring confidence back. We are willing to shift a whole system that we just went through with HAVA on how we want these machines because we want voter confidence. We should have 100 percent voter confidence. We should make sure those who are allowed to vote like 100 countries do this, but we don't ask, but you can't get on an airplane, you can't rent a car, you can't shop, you can't cash a check.

Mr. DAVIS of Alabama. Let me, right now, pose this in forms of questions to Mr. McCarthy and Mr. Lungren, certainly won't take very long to do it.

Mr. Lungren, you were making the assertion that you didn't understand the argument or you weren't very sympathetic to the argument on the other side that this had the effect of diluting minority voter rights as you were probably aware, the Eleventh Circuit Court of Appeals, which is an overwhelmingly Republican circuit, ruled several years ago that the Georgia voter ID was unconstitutional exactly because it created a dilution of black voting participation in Georgia.

So I would ask you to address that.

Mr. McCarthy, if I can pose a question to you, if an individual walks into a polling place with an intent to commit fraud, obviously that person has at least to know the name of the voters list. You have to walk in and say your name that is on the list obviously. If someone has an nefarious intent to do that, I think we would all agree the easiest thing in the world, if you doubt this, talk to a 16-year-old, the easiest thing in the world is to get a fake ID.

So if someone is nefarious enough to decide I want to pretend to be John Jones and go through a list of voters and just distribute the names, it would seem to me that person is almost certainly nefarious enough to engage in fake IDs. But I would yield to both of you to address it either of those points.

Mr. MCCARTHY. Well, I will answer first and I will yield some time to the former attorney general of California. The only thing I would say if today you can walk in and say you are somebody and you never can be questioned on it or show an ID, that is much easier than going to the task of creating a fake ID and trying to show it to vote. I just think it is another checks and balances that protects us in the long run. And I yield the balance of my time.

The CHAIRMAN. It is not your time to yield. I just want to let you know that I am paying attention.

Mr. LUNGREN. As understand it, the Eleventh circuit struck down the Georgia ID law because of the fact that it did not provide dollars—money for indigents for ID cards. And I understand, this amendment does provide that benefit so that we would get around that number one.

Number two, look, I don't want the gentleman to think I am not sensitive to the concern he expresses. And I believe that Andrew young is concerned about what the gentleman expresses and came to the conclusion that this would not discriminate against any particular group if we applied it across the board.

And so the gentleman from California's amendment allows this, for the provision of funds to reimburse the States for the cost of providing such free IDs to the indigent and I believe that will take care of the gentleman's problem.

If I could just also mention one thing, when I was in Congress, I think it was 1981, we had a situation in which a Member of Congress voted on a resolution that I had on the floor which dealt with the disciplining of a Member here who had been convicted of 29 felony counts.

The Member was registered as voting with his electronic card, but at the time we voted he was in Chicago conducting a hearing for the committee he then chaired.

It ended up that for whatever reason, apparently some Members thought it was okay to vote other Members cards when they weren't here. The gentleman first made excuses, finally took ill and never did return to the Congress deciding not to vote and it brought to me that even as honorable a body as this—which I think is an honorable body, and I will defend the House of Representatives with attacks by a lot of people—we had a situation in which identity theft or identity fraud can take place. And we had to take action in this House to make it clear that that is a violation of the rules and that Member would have been expelled had he not left of his own accord.

I am just saying that if we found that situation here, ought we not to extend that same sort of concern about someone voting who doesn't have the right to vote?

Mr. DAVIS of Alabama. Let me reclaim and I will wrap this up because I know the chairman wants this moved to an end, but I do want to correct one factual point my friend from California made. If I understand your amendment correctly, you put a provision in place for individuals to obtain a government ID, in effect, for voting, but you still got to obtain some proof of who you are before you get the government ID. For example, a birth certificate would be one obvious way to get it. Birth certificates aren't free, they cost money. Passport, passports cost money, naturalization pa-

pers if you don't have them, cost money. So in other words, it is not quite as simple as you make it sound.

To obtain the special ID for voter purposes, you would have to have an ID for which you would have to pay money potentially, and that is squarely what the 11th circuit ruled in Georgia was impermissible. They ruled what was impermissible was imposing a fee or requiring a fee before one could exercise the right to vote.

If the identification process pushes one in a direction toward obtaining fee based documents, I would argue that would still run afoul.

The CHAIRMAN. Time is running out. The only people who have time left are myself and the Ranking Member. Mr. Ehlers, go right ahead.

Mr. EHLERS. I thank the gentleman. First of all, unfortunately Mr. Capuano is not here, but I want to reassure them that I am not a Nazi. I also want to inform everyone that you do need an ID to buy a gun and I won't comment on his other statements.

I am really appreciative of the fact that we don't have any more votes, so we can go for several hours yet without interruption.

The CHAIRMAN. I doubt that if I am still here.

Mr. EHLERS. Here is where the strong gavel comes out. Let me just make a couple of points. The gentleman from California, the one to my right, commented that when Mexico adopted a voter ID, the turnout went up. That is not the only case. Arizona in a referendum last year adopted a photo ID. Their voter turnout went up. So those who say it will go down when you have a voter ID are just dead wrong. The evidence is there.

Another factor is that last year this committee approved and the House passed precisely what we are talking about here, a voter ID. We—Mr. Davis, for your information on that made certain that anyone who is indigent not only get the ID paid for, but they get the backup paper records paid for and any legal requirements that were necessary paid for. So no one would be discriminated against on the basis of income or access or anything else.

And as I said it passed the House. Everyone seemed to think it was a good idea.

I think that this is a very good idea, something that should be required. I am amazed it hasn't been required before.

The arguments against it are very weak. I just defeated all of them. Everyone on our side here has indicated that they are not valid arguments. It is something that we simply should require for something as valuable as voting. Now, this clearly was not necessary in the town where I was born, because the voting officials knew everyone in the town. And so when you went in to vote they would say, hi Sam, good to see you again, et cetera. In today's world, with the tremendous growth in population, plus the tremendous mobility of our Nation moving from one place to another, I think it is perfectly reasonable and logical and, in fact, necessary that we require a voter ID from voters if we are required to use a photo ID for so many other activities, cashing a check, buying certain goods, buying a gun, I can go on and on. What is so awfully bad about requiring a voter to carry an ID to indicate that he or she is who he or she says they are? I think it is a very, very good idea, and I strongly support this amendment.

I yield back.

The CHAIRMAN. The question is on the—

Ms. LOFGREN. Mr. Chairman I will be very brief.

The CHAIRMAN. I heard that before no matter how long it takes.

Ms. LOFGREN. The Eagleton study, which the EAC sponsored pointed out that in States where voters were required to present ID documents, African Americans were 5.7 percent less likely to vote, Hispanics 10 percent less likely to vote, Asian Americans 8.5 percent less likely to vote, and the Brennan Center said as many as 13 million United States citizens—or 7 percent—do not have ready access to citizenship documents.

I would like to make the letter from the Leadership Conference on Civil Rights a part of our record, but they strongly urge us to oppose this requirement and say that voter ID requirements represent one of the most serious threats in decades to our efforts to ensure the right of every eligible American and that is from Wade Henderson, the leader on civil rights in America.

[The information follows:]



## Leadership Conference on Civil Rights

1629 K Street, NW  
10<sup>th</sup> Floor  
Washington, D.C. 20006  
Phone: 202-466-3311  
Fax: 202-466-3435  
www.civilrights.org

### Oppose 21<sup>st</sup> Century Poll Tax: Defeat Ehlers Voter ID Amendment

May 8, 2007

Dear House Administration Committee Member:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write in strong opposition to any amendment to H.R. 811 that would impose new requirements on voters to show photo identification prior to exercising their constitutional right to vote. We understand that Committee Ranking Member Rep. Vernon Ehlers (R-MI) intends to offer such an amendment. If so, we urge you in the strongest terms to defeat it.

Voter ID requirements represent one of the most serious threats in decades to our efforts to ensure the right of every eligible American to vote. They would encourage racial and ethnic discrimination at polling places, would prevent many eligible voters across the country from participating in our democracy, and would do nothing to combat genuine instances of voter fraud. Indeed, citing such concerns, federal courts have already struck down several state-level voter ID laws on constitutional grounds.

We oppose the Ehlers voter ID amendment for the following reasons:

First, **no citizen should have to pay to vote.** Many U.S. citizens either do not have or cannot easily access documents that prove their identity, such as a passport or birth certificate. Proposals that would give free ID to voters who cannot afford it are not sufficient, as our most cherished civil right should never depend on the annual appropriations process. Furthermore, citizens would still be faced with the expense and time involved in getting the documentation required to obtain photo ID. While the Voting Rights Act eliminated poll taxes, the Ehlers amendment would bring them back.

Second, **photo ID requirements will disproportionately disenfranchise people of color, the elderly, individuals with disabilities, rural and Native voters, the homeless, low-income people, and married women,** who are less likely to carry a photo ID. They also give poll workers an unacceptable level of discretion, opening the door to discrimination at the polls against racial, ethnic, and language-minority voters.

Third, while supporters of stronger photo ID requirements argue that they are needed to combat voter fraud, **the evidence clearly establishes that current anti-fraud laws work.** Moreover, while there is no question that election misconduct exists, including improper purges of voters, distributing false information about when and where to vote, stuffing ballot boxes, and tampering with registration forms, there is no evidence that the type of fraud that the Ehlers amendment purports to address – voters who misrepresent their identity – is anything but an anomaly.

*"Equality in a Free, Plural, Democratic Society"*

Hubert H. Humphrey Civil Rights Award Dinner • May 10, 2007

**OFFICERS**  
**CHAIRPERSON**  
 Dorothy I. Height  
*National Council of Negro Women*

**VICE CHAIRPERSONS**  
 Judith L. Lichtman  
*National Partnership for Women & Families*  
 Karen K. Naraoki  
*Asian American Justice Center*  
 William L. Taylor  
*Citizens' Commission on Civil Rights*

**SECRETARY**  
 William D. Navelli  
 AARP

**TREASURER**  
 Gerald W. McGinnis  
 AFSOCME

**EXECUTIVE COMMITTEE**  
 Barbara Aronson  
*Lawyers' Committee For Civil Rights Under Law*  
 Robert W. Edgar  
*National Council of Churches*  
 Caroline Fredrickson  
*American Civil Liberties Union*  
 Kim Gandy  
*National Organization for Women*  
 Ron Gettlefinger  
*International Union, United Automobile Workers of America*  
 Bruce S. Gooden  
 NAACP  
 Marcia Greenberger  
*National Women's Law Center*  
 Andrew J. Ingarapa  
*American Association of People with Disabilities*  
 Jacqueline Johnson  
*National Congress of American Indians*  
 Edward J. McElroy  
*American Federation of Teachers, AFL-CIO*  
 Floyd Merri  
*Japanese American Citizens League*  
 Marc H. Meindl  
*National Urban League*  
 James Murgala  
*National Council of La Raza*  
 Ralph G. Nease  
*People For the American Way*  
 Debra Ness  
*National Partnership for Women and Families*  
 David Saperstein  
*Union for Reform Judaism*  
 Thoshkare M. Shaw  
*NAACP Legal Defense & Educational Fund, Inc.*  
 Shanna L. Smith  
*National Fair Housing Alliance*  
 Eric Solomonson  
*Human Rights Campaign*  
 Andrew L. Stern  
*Service Employees International Union*  
 John Tapscott  
*Mexican American Legal Defense and Educational Fund*  
 Rog Weaver  
*National Education Association*  
 Michele Washelle Weberald  
*American Association of University Women*  
 Mary G. Wilson  
*League of Women Voters of the United States*  
 Richard Womack  
 AFL-CIO

**COMPLIANCE/ENFORCEMENT COMMITTEE CHAIRPERSON**  
 Karen K. Naraoki  
*Asian American Justice Center*

**PRESIDENT & CEO**  
 Wade J. Haddadski



The right to vote, and to have your vote counted, is the most important civil right of all. Photo identification requirements are one of the greatest threats to fair and equal voting rights today. Congress should be in the business of encouraging full participation of our citizenry, not developing ways to limit the right to vote. For these reasons, we urge you to oppose any photo identification amendment that may arise during the consideration of H.R. 811.

Thank you for your consideration. If you have any questions, please contact Rob Randhava, LCCR Counsel, at (202) 466-6058 or at [randhava@civilrights.org](mailto:randhava@civilrights.org).

Sincerely,

Handwritten signature of Wade Henderson in black ink.

Wade Henderson  
President & CEO

Handwritten signature of Nancy Zirkin in black ink.

Nancy Zirkin  
Vice President / Director of Public Policy

Ms. LOFGREN. I would just like to note that last year when we adopted this provision, not everyone did agree. I certainly did not agree. And we have ample evidence that these measures do have a discriminatory impact on low income Americans and on various ethnicities. And I hope that we can take a broader look at this in the Election Subcommittee later in the year, and I thank the chairman for his indulgence in letting me say that and I yield back.

The CHAIRMAN. Thank you. The question is on the amendment. All those in favor, signify by saying "aye."

Any opposed signify by saying, "no."

No.

The noes appear to have it.

Mr. MCCARTHY. I would ask for a roll call.

The CHAIRMAN. Clerk please call the roll.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Yes.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No. The noes are 5 the ayes are 3. The amendment, McCarthy Number 2, fails.

Mr. MCCARTHY. Mr. Chairman, I have amendment Number 3 Mr. McCarthy at the desk.

The CHAIRMAN. Without objection the amendment is considered as read and the gentleman is recognized for five minutes.

[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. MCCARTHY**

**McCarthy amendment #3**

Insert after section 5 of the matter proposed to be inserted by the substitute the following (and redesignate the succeeding provision accordingly):

1 **SEC. 6. REQUIRING VOTERS TO PROVIDE PHOTO IDENTIFICATION.**  
2

3 (a) REQUIREMENT TO PROVIDE PHOTO IDENTIFICATION AS CONDITION OF RECEIVING BALLOT.—  
4

5 (1) REQUIREMENT TO PROVIDE PHOTO IDENTIFICATION AS CONDITION OF RECEIVING BALLOT.—  
6

7 Section 303(b) of the Help America Vote Act of  
8 2002 (42 U.S.C. 15483(b)) is amended—

9 (A) in the heading, by striking “FOR VOTERS WHO REGISTER BY MAIL” and inserting  
10 “FOR PROVIDING PHOTO IDENTIFICATION”;  
11 and  
12

13 (B) by striking paragraphs (1) through (3)  
14 and inserting the following:

15 “(1) INDIVIDUALS VOTING IN PERSON.—

16 “(A) REQUIREMENT TO PROVIDE IDENTIFICATION.—Notwithstanding any other provi-  
17

1           sion of law and except as provided in subpara-  
2           graph (B), the appropriate State or local elec-  
3           tion official may not provide a ballot for an  
4           election for Federal office to an individual who  
5           desires to vote in person unless the individual  
6           presents to the official—

7                   “(i) a government-issued, current, and  
8                   valid photo identification; or

9                   “(ii) an affidavit signed by the indi-  
10                  vidual stating that the individual does not  
11                  have possess a government-issued, emrrent,  
12                  and valid photo identification.

13                 “(B) AVAILABILITY OF PROVISIONAL BAL-  
14                 LOT.—If an individual does not present the  
15                 identification required under subparagraph (A),  
16                 the individual shall be permitted to east a provi-  
17                 sional ballot with respect to the election under  
18                 section 302(a), except that the appropriate  
19                 State or local election official may not make a  
20                 determination under section 302(a)(4) that the  
21                 individual is eligible under State law to vote in  
22                 the election unless the individual presents the  
23                 identification required under subparagraph (A)  
24                 to the official not later than 48 hours after  
25                 casting the provisional ballot.

1           “(2) INDIVIDUALS VOTING OTHER THAN IN  
2           PERSON.—

3           “(A) IN GENERAL.—Notwithstanding any  
4           other provision of law and except as provided in  
5           subparagraph (B), the appropriate State or  
6           local election official may not accept any ballot  
7           for an election for Federal office provided by an  
8           individual who votes other than in person unless  
9           the individual submits with the ballot—

10           “(i) a copy of a government-issued,  
11           current, and valid photo identification; or

12           “(ii) an affidavit signed by the indi-  
13           vidual stating that the individual does not  
14           have possess a government-issued, current,  
15           and valid photo identification.

16           “(B) EXCEPTION FOR OVERSEAS MILITARY  
17           VOTERS.—Subparagraph (A) does not apply  
18           with respect to a ballot provided by an absent  
19           uniformed services voter who, by reason of ac-  
20           tive duty or service, is absent from the United  
21           States on the date of the election involved. In  
22           this subparagraph, the term ‘absent uniformed  
23           services voter’ has the meaning given such term  
24           in section 107(1) of the Uniformed and Over-  
25           seas Citizens Absentee Voting Act (42 U.S.C.

1 1973ff—6(1)), other than an individual de-  
 2 scribed in section 107(1)(C) of such Act.

3 “(3) SPECIFIC REQUIREMENTS FOR GOVERN-  
 4 MENT ISSUE.—For purposes of paragraphs (1) and  
 5 (2), an identification is ‘government-issued’ if it is  
 6 issued by the Federal Government or by the govern-  
 7 ment of a State.”.

8 (2) CONFORMING AMENDMENTS.—Section 303  
 9 of such Act (42 U.S.C. 15483) is amended—

10 (A) in the heading, by striking “**FOR VOT-**  
 11 **ERS WHO REGISTER BY MAIL**” and inserting  
 12 “**FOR PROVIDING PHOTO IDENTIFICA-**  
 13 **TION**”; and

14 (B) in subsection (e), by striking “sub-  
 15 sections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II)”  
 16 and inserting “subsection (a)(5)(A)(i)(II)”.

17 (3) CLERICAL AMENDMENT.—The table of con-  
 18 tents of such Act is amended by amending the item  
 19 relating to section 303 to read as follows:

“Sec. 303. Computerized statewide voter registration list require-  
 ments for providing photo identification.”.

20 (4) EFFECTIVE DATE.—

21 (A) IN GENERAL.—This subsection and the  
 22 amendments made by this subsection shall  
 23 apply with respect to the regularly scheduled  
 24 general election for Federal office held in No-

1 vember 2010 and each subsequent election for  
2 Federal office.

3 (B) CONFORMING AMENDMENT.—Section  
4 303(d)(2) of such Act (42 U.S.C. 15483(d)(2))  
5 is amended to read as follows:

6 “(2) REQUIREMENT TO PROVIDE PHOTO IDEN-  
7 TIFICATION.—Paragraphs (1) and (2) of subsection  
8 (b) shall apply with respect to the regularly sched-  
9 uled general election for Federal office held in No-  
10 vember 2010 and each subsequent election for Fed-  
11 eral office.”.

12 (b) MAKING PHOTO IDENTIFICATIONS AVAILABLE.—

13 (1) REQUIRING STATES TO MAKE IDENTIFICA-  
14 TION AVAILABLE.—Section 303(b) of such Act (42  
15 U.S.C. 15483(b)), as amended by subsection  
16 (a)(1)(B), is amended—

17 (A) by redesignating paragraphs (4) and  
18 (5) as paragraphs (5) and (6); and

19 (B) by inserting after paragraph (3) the  
20 following new paragraph:

21 “(4) MAKING PHOTO IDENTIFICATIONS AVAIL-  
22 ABLE.—

23 “(A) IN GENERAL.—During fiscal year  
24 2010 and each succeeding fiscal year, each  
25 State shall establish a program to provide photo

1 identifications which may be used to meet the  
2 requirements of paragraphs (1) and (2) by indi-  
3 viduals who desire to vote in elections held in  
4 the State but who do not otherwise possess a  
5 government-issued photo identification.

6 “(B) IDENTIFICATIONS PROVIDED AT NO  
7 COST TO INDIGENT INDIVIDUALS.—If a State  
8 charges an individual a fee for providing a  
9 photo identification under the program estab-  
10 lished under subparagraph (A)—

11 “(i) the fee charged may not exceed  
12 the reasonable cost to the State of pro-  
13 viding the identification to the individual;  
14 and

15 “(ii) the State may not charge a fee  
16 to any individual who provides an attesta-  
17 tion that the individual is unable to afford  
18 the fee.

19 “(C) IDENTIFICATIONS NOT TO BE USED  
20 FOR OTHER PURPOSES.—Any photo identifica-  
21 tion provided under the program established  
22 under subparagraph (A) may not serve as a  
23 government-issued photo identification for pur-  
24 poses of any program or function of a State or

1 local government other than the administration  
2 of elections.”.

3 (2) PAYMENTS TO STATES TO COVER COSTS.—  
4 Subtitle D of title II of such Act (42 U.S.C. 15321  
5 et seq.), as amended by section 2(c)(4)(A), is further  
6 amended by adding at the end the following new  
7 part:

8 **“PART 8—PAYMENTS TO COVER COSTS OF PRO-**  
9 **VIDING PHOTO IDENTIFICATIONS TO INDI-**  
10 **GEN T INDIVIDUALS**

11 **“SEC. 298. PAYMENTS TO COVER COSTS TO STATES OF PRO-**  
12 **VIDING PHOTO IDENTIFICATIONS FOR VOT-**  
13 **ING TO INDIGENT INDIVIDUALS.**

14 “(a) PAYMENTS TO STATES.—The Commission shall  
15 make payments to States to cover the costs incurred in  
16 providing photo identifications under the program estab-  
17 lished under section 303(b)(4) to individuals who are un-  
18 able to afford the fee that would otherwise be charged  
19 under the program.

20 “(b) AMOUNT OF PAYMENT.—The amount of the  
21 payment made to a State under this part for any year  
22 shall be equal to the amount of fees which would have  
23 been collected by the State during the year under the pro-  
24 gram established under section 303(b)(4) but for the ap-  
25 plication of section 303(b)(4)(B)(ii), as determined on the

1 basis of information furnished to the Commission by the  
2 State at such time and in such form as the Commission  
3 may require.

4 **“SEC. 298A. AUTHORIZATION OF APPROPRIATIONS.**

5 “There are authorized to be appropriated for pay-  
6 ments under this part such sums as may be necessary for  
7 fiscal year 2010 and each succeeding fiscal year.”.

8 (3) CLERICAL AMENDMENT.—The table of con-  
9 tents of such Act, as amended by section 2(c)(4)(B),  
10 is further amended by adding at the end of the  
11 items relating to subtitle D of title II the following:

“PART 8—PAYMENTS TO COVER COSTS OF PROVIDING PHOTO  
IDENTIFICATIONS TO INDIGENT INDIVIDUALS

“Sec. 298. Payments to cover costs to States of providing photo identifications  
for voting to indigent individuals.

“Sec. 298A. Authorization of appropriations.”.

12 (4) EFFECTIVE DATE.—This subsection and the  
13 amendments made by this subsection shall take ef-  
14 fect October 1, 2009.

Mr. MCCARTHY. Having thought ahead of time of some of the arguments you may have to amendment Number 2, I offered in the worst case scenario that Number 2 failed, amendment Number 3. Such as the earlier amendment, individuals are required to show photo ID at the polls. But I have heard from some of the arguments across the aisle that maybe you disenfranchise somebody. Gentlelady from California, Ms. Davis, stated people sign their names when they are in there. So all I would say is this provision establishes the important principle that voters have to show the photo IDs. If they do not absolutely have the voter id when they go in there, all they have to do is sign a piece of paper claiming they are who they say they are. So we would take away the argument of disenfranchising somebody. This is not 100 percent voter proof. But I think it is a step in the right direction. They can find a common ground to the arguments that are made by the other side that we could come together because it wouldn't disenfranchise somebody. They are already signing their names at the polls. So they would just have to sign their name, stating they are who they are and listening to the former attorney general of California saying the reasons you don't find cases because you don't have the evidence to move forward. So this would also give the ability to have the evidence if somebody was providing voter fraud, and then go right back to what we have—about this bill itself, giving the voters the confidence in it to be able to move forward. I yield back my time.

The CHAIRMAN. Thank the gentleman. Lady from California, Ms. Lofgren.

Ms. LOFGREN. I note that even though we postponed this hearing from last week to this week so that everybody could have an opportunity to look at everybody's amendments, I am advised by staff that this amendment was received by them only 15 minutes before the markup began.

I don't know what the impact of this amendment would be, and I think it is something that when we look at this overall issue and the Election Subcommittee later in the year we will look at, but I think to throw it out at this time with 15 minutes notice is not the appropriate way to proceed, and so I would urge that we oppose it at this time and I thank the gentleman for yielding—or I would yield to Mr. Davis.

Mr. DAVIS of Alabama. Two quick points. I thank the gentlelady for yielding. What is unclear from the amendment, let's say the individual, for whatever reason, was not English speaking. How would they go about signing the affidavit that that is an ambiguity that is contained in the amendment? I can also imagine some instances frankly that this would amount to a de facto literacy test. And again, someone presumably would have to go through some step of reading the document and signing it. And I hear the gentleman thinking that well, someone should be able to read when they walk in the polling places and the problem is, we have had that debate in this country before and we have said no literacy tests. And we also—I am troubled by the language implications. I yield.

Mr. MCCARTHY. Was that a question?

Mr. DAVIS of Alabama. Yes, I yield so the gentleman can respond to that.

Mr. MCCARTHY. To vote in the first place, we make people fill out voter registrations. So I think we take the assumption from the very beginning that a person can read when they fill that out. So I wasn't going to anything further. Plus when a person goes to vote, they already are signing their name. They have to be able to read where they sign their name. I would accept a friendly amendment if you wanted to clarify within this amendment that we would provide the language in which the person speaks much as if they are—

Mr. DAVIS of Alabama. Reclaiming my time let me ask the gentleman one quick question if someone were to walk in right now and were to fill out the wrong name on the voter form would they be prosecuted inside your opinion?

Mr. MCCARTHY. Any decision on the prosecution goes up to the individual, the DA—

Mr. DAVIS of Alabama. No—

Mr. MCCARTHY. Reclaiming my time.

Ms. LOFGREN. Actually it is my time.

Mr. DAVIS of Alabama. I am trying to get an answer to the question. If an individual were to walk in and I were to say I am Zoe Lofgren and I were to put Zoe Lofgren down, could I be prosecuted today? Because it seems if I could be prosecuted today, this amendment is completely unnecessary.

Mr. MCCARTHY. No. Only your intent to go forward—to apply yourself just like identity theft that you were Zoe Lofgren. You had explained to me in the earlier debate that there are no cases such as this or not very many. And I have heard from the attorney general who says that he couldn't move forward in those cases because there was no evidence—

Mr. DAVIS of Alabama. The state of the law today, I am asking use prosecutorial discretion, and if I walked in and said I am Bob Brady under the law today, can I be prosecuted?

The CHAIRMAN. Yes, you would be prosecuted.

Ms. LOFGREN. Reclaiming my time I would just note that Mr. Davis is a former U.S. Attorney, and I think has some background in all of these things. I think this discussion leads me to the conclusion we certainly need to know more about this proposal than we do now. And I am sure that when we have hearings on this subject matter, we will hear it further.

I also want to note that the majority staff has indicated that the minority staff sent the amendment at 9 p.m. last night. I was not sitting in my office at 9 p.m. last night, so I don't know. I still think it is way too hurried, but I do hope that we can look at this later in the year in the Election Subcommittee. And I understand the Chairman wants a vote on this. I will yield back so that he may take our vote. Thank you.

Mr. LUNGREN. Mr. Chairman.

The CHAIRMAN. Yes. Mr. Lungren from California.

Mr. LUNGREN. I would like the last word. Mr. Chairman, this whole bill is about redundancy. This whole bill is to have a second way of checking the accuracy of the voter count, if you will, the attestation required by Mr. McCarthy's alternative is a redundancy.

It is another check to ensure that people are not going to commit fraud. As the gentleman knows, when you prosecute, sometimes it may be easier to prosecute for someone intentionally signing something under oath that is untrue as opposed to them attempting to prove the intent to vote improperly.

The other thing is, I am just sorry, but the arguments I hear about this could be utilized as a literacy test or this could be utilized as a voter fee. I mean, all those arguments can be used by registration. If I were to take a logical conclusion of my friends on the other side of the aisle we ought to do away with registration. I presume that would increase voter participation. Anybody just shows up off the street can vote. I know there might be fraud involved but it is more important that we get more people voting whether or not they qualify.

I mean, the manner in which these amendments are being dismissed suggests that there is no concern about the identity of voters, that somehow this bill which purports to ensure that we are going to protect the integrity of the voting process, doesn't believe that identity fraud or identity theft has any place in our discussions, even though it is the hot topic out there in terms of credit cards, in terms of all sorts of things in this new world that we live in. And I just find it hard to believe that Mexico can be ahead of us in terms of its concerns for the integrity of its system and yet we say if we did this sort of thing it would somehow violate constitutional norms because it would be utilized in ways to depress turnout, when, in fact, just the opposite has been the case in Mexico, in any number of countries around the world.

Someone diminishes my vote by voting when they don't have a right to vote as surely as if you refused to allow me to vote when I have the opportunity to vote.

And we look at this only on one side.

And I just think that that is a terrible shame. And I would hope that we would at least look at the gentleman's amendment for what it is and not for some of the outrageous things it has been suggested it is for. I yield.

The CHAIRMAN. The question is on the amendment?

Ms. LOFGREN. Mr. Chairman before we vote, may I ask unanimous consent to add into the record the article from Roll Call, of The New York Times and The New York Times editorial on this subject and the National Leadership Council letter?

The CHAIRMAN. Without objection.

[The information follows:]

### **EAC Blasted Again for Burying Study**

By Matthew Murray  
Roll Call Staff

April 9, 2007

The beleaguered Election Assistance Commission is weathering new criticism amid charges it mishandled a controversial and expensive voting study, again drawing scrutiny from Congress and outside groups just as the agency battles back from recent allegations that it stumbled in overseeing voting machine testing labs.

The current controversy is over the politically sensitive issue of voter identification laws.

At best, critics say the agency unnecessarily delayed publicizing findings of a voter identification project that was released only 10 days ago and shows that some state laws significantly disenfranchise black and Hispanic voters. At worst, experts suggest the commission yielded to political pressure, attempting to bury the uncomfortable conclusions of a poorly managed study that sapped the tiny agency's resources — and still didn't yield the data the EAC must by law provide.

In 2005, Rutgers University signed a two-project deal with the commission worth \$560,002, according to a copy of the signed contract obtained by Roll Call. The EAC, which was created by 2002's Help America Vote Act, contracted the university's Eagleton Institute of Politics to produce research supporting the "development of guidelines on topics of provisional voting and voter identification procedures."

In short, EAC officials, who set aside roughly 5 percent of the agency's fiscal 2005 budget for the study, thought they were commissioning a survey of voter identification procedures across the country.

But with the check cashed, on June 28, 2006, EAC officials got more — and less — than they bargained for. Rutgers' Eagleton Institute and Ohio State University's Moritz College of Law submitted research titled "Best Practices to Improve Voter Identification Requirements," which commission officials claim is a slight detour from Rutgers' original marching orders.

The study was released 10 days ago at the insistence of Rep. Maurice Hinchey (D-N.Y.), who oversees the EAC's budget on the House Appropriations Committee.

"We asked them to analyze problems and challenges, and to come up with different answers to problems and challenges of having voter identification law," said Caroline Hunter, a Republican-nominated EAC commissioner who took her seat on the EAC in

March. “What we ended up getting was a little bit different from what we originally asked for.”

Hunter continued: “It’s fair to say the original request did not ask them to study the effect of identification on [voter] turnout. Now, whether it evolved into that is another story. Originally that wasn’t part of the contract.”

Commission officials declined to elaborate specifically on subsequent discussions with Rutgers on the project, other than to confirm that university researchers approached the agency about shifting the study’s focus and that the EAC agreed.

“I don’t think anyone here is saying we weren’t a part of the conversation,” Hunter said.

But once the study was complete, Hunter said, the agency did take issue with the allegedly faulty math used to conduct the research, and that may have doomed the study right out of the gate regardless of its conclusion.

“It was a methodology that we had concerns with,” Hunter said. “The way that it was done, there were some concerns.”

Tim Vercellotti, a Rutgers political science professor who co-directs the Eagleton Institute, disputes Hunter’s charge that the study cherry-picked statistics to show a relationship between voter identification laws and voter participation, a correlation that may or may not exist.

While the agency is well within its rights to decide what research it issues as guidelines, Vercellotti said, there is no doubt the study’s methodology is sound. What also appears certain, he suggested, is the issue’s ability to strike controversy along constitutional and racial grounds.

“I speak for the research team that worked on the project,” Vercellotti said. “It’s a solid piece of social science research, but it’s being released into a very political environment.”

Vercellotti added: “People are very sensitive about the implications of [voter identification requirements] having any relationship to lower voter turnout among any group, but particularly among people of color.”

Another individual familiar with the study, who requested not to be named, said the commission’s unanimous decision not to adopt the Rutgers study had little to do with the study’s science. The EAC simply is having buyer’s remorse for a lightly managed project involving a sensitive subject that is being forced into a politically charged environment.

“This is a bipartisan commission and I suspect this was simply too hot to handle — especially with regards to the Republicans on the commission,” the source said. “If what they were looking for was a different kind of study, the EAC should have been clearer up front on what it wanted.”

While some experts dispute the math, others say the agency's lack of transparency during the process is troublesome. Wendy Weiser of the Brennan Center for Justice at New York University School of Law agrees that while the agency decides what guidelines to adopt, it must disclose its rationale for not disclosing even shoddy results.

"It was a serious mistake for the EAC to withhold this information that was submitted to them at a time when the country has been immersed in debates on these issues at both the state and federal levels and in the courts," Weiser said. "It seems to me to be highly improper for an agency whose mission is to make information about election administration issues available to the public to suppress or withhold that information. At the time the report was submitted to the EAC, there were voter ID bills pending in roughly half the states to try and create more stringent documentation requirements for voting."

Weiser concluded: "And they're using substantial federal dollars to do so."

An unwillingness to disclose a potentially embarrassing snafu is at the forefront of Hinchey's concerns. He also wants the agency to release an earlier draft on voter fraud, arguing that study could contain vital information that has remained hidden from public scrutiny.

"The primary concern he has with the EAC has to do with transparency," said Hinchey spokesman Jeff Lieberman. "And the fact that these studies were commissioned ... the public has a right to see what the findings were."

NEW YORK TIMES

---

**April 11, 2007**

**Panel Said to Alter Finding on Voter Fraud**

**By IAN URBINA**

WASHINGTON, April 10 — A federal panel responsible for conducting election research played down the findings of experts who concluded last year that there was little voter fraud around the nation, according to a review of the original report obtained by The New York Times.

Instead, the panel, the Election Assistance Commission, issued a report that said the pervasiveness of fraud was open to debate.

The revised version echoes complaints made by Republican politicians, who have long suggested that voter fraud is widespread and justifies the voter identification laws that have been passed in at least two dozen states.

Democrats say the threat is overstated and have opposed voter identification laws, which they say disenfranchise the poor, members of minority groups and the elderly, who are less likely to have photo IDs and are more likely to be Democrats.

Though the original report said that among experts “there is widespread but not unanimous agreement that there is little polling place fraud,” the final version of the report released to the public concluded in its executive summary that “there is a great deal of debate on the pervasiveness of fraud.”

The topic of voter fraud, usually defined as people misrepresenting themselves at the polls or improperly attempting to register voters, remains a lively division between the two parties. It has played a significant role in the current Congressional investigation into the Bush administration’s firing of eight United States attorneys, several of whom, documents now indicate, were dismissed for being insufficiently aggressive in pursuing voter fraud cases.

The report also addressed intimidation, which Democrats see as a more pervasive problem.

And two weeks ago, the panel faced criticism for refusing to release another report it commissioned concerning voter identification laws. That report, which was released after intense pressure from Congress, found that voter identification laws designed to fight fraud can reduce turnout, particularly among members of minorities. In releasing that report, which was conducted by a different set of scholars, the commission declined to endorse its findings, citing methodological concerns.

A number of election law experts, based on their own research, have concluded that the accusations regarding widespread fraud are unjustified. And in this case, one of the two experts hired to do the report was Job Serebrov, a Republican elections lawyer from Arkansas, who defended his research in an e-mail message obtained by The Times that was sent last October to Margaret Sims, a commission staff member.

“Tova and I worked hard to produce a correct, accurate and truthful report,” Mr. Serebrov wrote, referring to Tova Wang, a voting expert with liberal leanings from the Century Foundation and co-author of the report. “I could care less that the results are not what the more conservative members of my party wanted.”

He added: “Neither one of us was willing to conform results for political expediency.”

For contractual reasons, neither Ms. Wang nor Mr. Serebrov were at liberty to comment on their original report and the discrepancies with the final, edited version.

The original report on fraud cites “evidence of some continued outright intimidation and suppression” of voters by local officials, especially in some American Indian communities, while the final report says only that voter “intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation.”

The original report said most experts believe that “false registration forms have not resulted in polling place fraud,” but the final report cites “registration drives by nongovernmental groups as a source of fraud.”

Although Democrats accused the board of caving to political pressure, Donetta L. Davidson, the chairwoman of the commission, said that when the original report was submitted, the board’s legal and research staff decided there was not enough supporting

data behind some of the claims. So, she said, the staff members revised the report and presented a final version in December for a vote by the commissioners.

“We were a small agency taking over a huge job,” said Ms. Davidson, who was appointed to the agency by President Bush in 2005. “I think we may have tried to do more research than we were equipped to handle.” She added that the commission had “always stuck to being bipartisan.”

The commission, which was created by Congress in 2002 to conduct nonpartisan research on elections, consists of two Republicans and two Democrats. At the time of the report, one of the two Democrats had left for personal reasons and had not yet been replaced, but the final report was unanimously approved by the other commissioners.

Gracia Hillman, the Democratic commissioner who voted in favor of releasing the final report, said she did not believe that the editing of the report was politically motivated or overly extensive.

“As a federal agency, our responsibility is to ensure that the research we produce is fully verified,” Ms. Hillman said. “Some of the points made in the draft report made by the consultants went beyond what we felt comfortable with.”

The Republican Party’s interest in rooting out voter fraud has been encouraged by the White House. In a speech last April, Karl Rove, Mr. Bush’s senior political adviser, told a group of Republican lawyers that election integrity issues were an “enormous and growing” problem.

“We’re, in some parts of the country, I’m afraid to say, beginning to look like we have elections like those run in countries where the guys in charge are colonels in mirrored sunglasses,” Mr. Rove said. “I mean, it’s a real problem.”

Several Democrats said they believed that politics were behind the commission’s decision to rewrite the report.

“This was the commission’s own study and it agreed in advance to how it would be done, but the most important part of it got dropped from the final version,” said Representative José E. Serrano, Democrat of New York and chairman of the House appropriations

subcommittee that oversees the commission. “I don’t see how you can conclude that politics were not involved.”

Representative Maurice D. Hinchey, another New York Democrat, who requested the draft report from Ms. Davidson during a subcommittee hearing last month, agreed.

“By attempting to sweep this draft report under the rug, the E.A.C. is throwing out important work, wasting taxpayer dollars and creating a cloud of suspicion as to why it is acting this way,” he said.

Some scholars and voting advocates said that the original report on fraud, for which the commission paid the authors more than \$100,000, was less rigorous than it should have been. But they said they did not believe that was the reason for the changes.

“Had the researchers been able to go even further than they did, they would have come to same conclusions but they would have had more analysis backing them up,” said Lorraine C. Minnite, a political science professor at Barnard College who is writing a book on voter fraud. “Instead, the commission rewrote their report and changed the thrust of its conclusions.”

Ray Martinez III, the Democrat who left the commission for personal reasons, quit last August. He said in an interview that he was not present for any discussion or editing of the voter fraud report.

Mr. Martinez added, however, that he had argued strenuously that all reports, in draft or final editions, should be made public. But he said he lost that argument with other commissioners.

“Methodology concerns aside, we commissioned the reports with taxpayer funds, and I argued that they should be released,” he said, referring to the delay in the release of the voter ID report. “My view was that the public and the academics could determine whether it is rigorous and if it wasn’t then the egg was on our face for having commissioned it in the first place.”

In recent months, the commission has been criticized for failing to provide proper oversight of the technology laboratories that test electronic voting machines and software. The commission is also responsible for conducting research and advising policy makers

on the implementation of the Help America Vote Act, the federal overhaul of election procedure prompted by the 2000 Florida debacle.

*Eric Lipton contributed reporting.*

NEW YORK TIMES

---

**April 12, 2007**

**In 5-Year Effort, Scant Evidence of Voter Fraud**

**By ERIC LIPTON and IAN URBINA**

WASHINGTON, April 11 — Five years after the Bush administration began a crackdown on voter fraud, the Justice Department has turned up virtually no evidence of any organized effort to skew federal elections, according to court records and interviews.

Although Republican activists have repeatedly said fraud is so widespread that it has corrupted the political process and, possibly, cost the party election victories, about 120 people have been charged and 86 convicted as of last year.

Most of those charged have been Democrats, voting records show. Many of those charged by the Justice Department appear to have mistakenly filled out registration forms or misunderstood eligibility rules, a review of court records and interviews with prosecutors and defense lawyers show.

In Miami, an assistant United States attorney said many cases there involved what were apparently mistakes by immigrants, not fraud.

In Wisconsin, where prosecutors have lost almost twice as many cases as they won, charges were brought against voters who filled out more than one registration form and felons seemingly unaware that they were barred from voting.

One ex-convict was so unfamiliar with the rules that he provided his prison-issued identification card, stamped “Offender,” when he registered just before voting.

A handful of convictions involved people who voted twice. More than 30 were linked to small vote-buying schemes in which candidates generally in sheriff’s or judge’s races paid voters for their support.

A federal panel, the Election Assistance Commission, reported last year that the pervasiveness of fraud was debatable. That conclusion played down findings of the

consultants who said there was little evidence of it across the country, according to a review of the original report by The New York Times that was reported on Wednesday.

Mistakes and lapses in enforcing voting and registration rules routinely occur in elections, allowing thousands of ineligible voters to go to the polls. But the federal cases provide little evidence of widespread, organized fraud, prosecutors and election law experts said.

“There was nothing that we uncovered that suggested some sort of concerted effort to tilt the election,” Richard G. Frohling, an assistant United States attorney in Milwaukee, said.

Richard L. Hasen, an expert in election law at the Loyola Law School, agreed, saying: “If they found a single case of a conspiracy to affect the outcome of a Congressional election or a statewide election, that would be significant. But what we see is isolated, small-scale activities that often have not shown any kind of criminal intent.”

For some convicted people, the consequences have been significant. Kimberly Prude, 43, has been jailed in Milwaukee for more than a year after being convicted of voting while on probation, an offense that she attributes to confusion over eligibility.

In Pakistan, Usman Ali is trying to rebuild his life after being deported from Florida, his legal home of more than a decade, for improperly filling out a voter-registration card while renewing his driver’s license.

In Alaska, Rogelio Mejorada-Lopez, a Mexican who legally lives in the United States, may soon face a similar fate, because he voted even though he was not eligible.

The push to prosecute voter fraud figured in the removals last year of at least two United States attorneys whom Republican politicians or party officials had criticized for failing to pursue cases.

The campaign has roiled the Justice Department in other ways, as career lawyers clashed with a political appointee over protecting voters’ rights, and several specialists in election law were installed as top prosecutors.

Department officials defend their record. “The Department of Justice is not attempting to make a statement about the scale of the problem,” a spokesman, Bryan Sierra, said. “But

we are obligated to investigate allegations when they come to our attention and prosecute when appropriate.”

Officials at the department say that the volume of complaints has not increased since 2002, but that it is pursuing them more aggressively.

Previously, charges were generally brought just against conspiracies to corrupt the election process, not against individual offenders, Craig Donsanto, head of the elections crimes branch, told a panel investigating voter fraud last year. For deterrence, Mr. Donsanto said, Attorney General Alberto R. Gonzales authorized prosecutors to pursue criminal charges against individuals.

Some of those cases have baffled federal judges.

“I find this whole prosecution mysterious,” Judge Diane P. Wood of the United States Court of Appeals for the Seventh Circuit, in Chicago, said at a hearing in Ms. Prude’s case. “I don’t know whether the Eastern District of Wisconsin goes after every felon who accidentally votes. It is not like she voted five times. She cast one vote.”

The Justice Department stand is backed by Republican Party and White House officials, including Karl Rove, the president’s chief political adviser. The White House has acknowledged that he relayed Republican complaints to President Bush and the Justice Department that some prosecutors were not attacking voter fraud vigorously. In speeches, Mr. Rove often mentions fraud accusations and warns of tainted elections.

Voter fraud is a highly polarized issue, with Republicans asserting frequent abuses and Democrats contending that the problem has been greatly exaggerated to promote voter identification laws that could inhibit the turnout by poor voters.

The New Priority

The fraud rallying cry became a clamor in the Florida recount after the 2000 presidential election. Conservative watchdog groups, already concerned that the so-called Motor Voter Law in 1993 had so eased voter registration that it threatened the integrity of the election system, said thousands of fraudulent votes had been cast.

Similar accusations of compromised elections were voiced by Republican lawmakers elsewhere.

The call to arms reverberated in the Justice Department, where John Ashcroft, a former Missouri senator, was just starting as attorney general.

Combating voter fraud, Mr. Ashcroft announced, would be high on his agenda. But in taking up the fight, he promised that he would also be vigilant in attacking discriminatory practices that made it harder for minorities to vote.

“American voters should neither be disenfranchised nor defrauded,” he said at a news conference in March 2001.

Enlisted to help lead the effort was Hans A. von Spakovsky, a lawyer and Republican volunteer in the Florida recount. As a Republican election official in Atlanta, Mr. Spakovsky had pushed for stricter voter identification laws. Democrats say those laws disproportionately affect the poor because they often mandate government-issued photo IDs or driver’s licenses that require fees.

At the Justice Department, Mr. Spakovsky helped oversee the voting rights unit. In 2003, when the Texas Congressional redistricting spearheaded by the House majority leader, Tom DeLay, Republican of Texas, was sent to the Justice Department for approval, the career staff members unanimously said it discriminated against African-American and Latino voters.

Mr. Spakovsky overruled the staff, said Joseph Rich, a former lawyer in the office. Mr. Spakovsky did the same thing when they recommended the rejection of a voter identification law in Georgia considered harmful to black voters. Mr. Rich said. Federal courts later struck down the two laws.

Former lawyers in the office said Mr. Spakovsky’s decisions seemed to have a partisan flavor unlike those in previous Republican and Democratic administrations. Mr. Spakovsky declined to comment.

“I understand you can never sweep politics completely away,” said Mark A. Posner, who had worked in the civil and voting rights unit from 1980 until 2003. “But it was much more explicit, pronounced and consciously done in this administration.”

At the same time, the department encouraged United States attorneys to bring charges in voter fraud cases, not a priority in prior administrations. The prosecutors attended

training seminars, were required to meet regularly with state or local officials to identify possible cases and were expected to follow up accusations aggressively.

The Republican National Committee and its state organizations supported the push, repeatedly calling for a crackdown. In what would become a pattern, Republican officials and lawmakers in a number of states, including Florida, New Mexico, Pennsylvania and Washington, made accusations of widespread abuse, often involving thousands of votes.

In swing states, including Ohio and Wisconsin, party leaders conducted inquiries to find people who may have voted improperly and prodded officials to act on their findings.

But the party officials and lawmakers were often disappointed. The accusations led to relatively few cases, and a significant number resulted in acquittals.

#### The Path to Jail

One of those officials was Rick Graber, former chairman of the Wisconsin Republican Party.

“It is a system that invites fraud,” Mr. Graber told reporters in August 2005 outside the house of a Milwaukeean he said had voted twice. “It’s a system that needs to be fixed.”

Along with an effort to identify so-called double voters, the party had also performed a computer crosscheck of voting records from 2004 with a list of felons, turning up several hundred possible violators. The assertions of fraud were turned over to the United States attorney’s office for investigation.

Ms. Prude’s path to jail began after she attended a Democratic rally in Milwaukee featuring the Rev. Al Sharpton in late 2004. Along with hundreds of others, she marched to City Hall and registered to vote. Soon after, she sent in an absentee ballot.

Four years earlier, though, Ms. Prude had been convicted of trying to cash a counterfeit county government check worth \$1,254. She was placed on six years’ probation.

Ms. Prude said she believed that she was permitted to vote because she was not in jail or on parole, she testified in court. Told by her probation officer that she could not vote, she said she immediately called City Hall to rescind her vote, a step she was told was not necessary.

“I made a big mistake, like I said, and I truly apologize for it,” Ms. Prude said during her trial in 2005. That vote, though, resulted in a felony conviction and sent her to jail for violating probation.

Of the hundreds of people initially suspected of violations in Milwaukee, 14 — most black, poor, Democratic and first-time voters — ever faced federal charges. United States Attorney Steven M. Biskupic would say only that there was insufficient evidence to bring other cases.

No residents of the house where Mr. Graber made his assertion were charged. Even the 14 proved frustrating for the Justice Department. It won five cases in court.

The evidence that some felons knew they that could not vote consisted simply of a form outlining 20 or more rules that they were given when put on probation and signs at local government offices, testimony shows.

The Wisconsin prosecutors lost every case on double voting. Cynthia C. Alicea, 25, was accused of multiple voting in 2004 because officials found two registration cards in her name. She and others were acquitted after explaining that they had filed a second card and voted just once after a clerk said they had filled out the first card incorrectly.

In other states, some of those charged blamed confusion for their actions. Registration forms almost always require a statement affirming citizenship.

Mr. Ali, 68, who had owned a jewelry store in Tallahassee, got into trouble after a clerk at the motor vehicles office had him complete a registration form that he quickly filled out in line, unaware that it was reserved just for United States citizens.

Even though he never voted, he was deported after living legally in this country for more than 10 years because of his misdemeanor federal criminal conviction.

“We’re foreigners here,” Mr. Ali said in a telephone interview from Lahore, Pakistan, where he lives with his daughter and wife, both United States citizens.

In Alaska, Rogelio Mejorada-Lopez, who manages a gasoline station, had received a voter registration form in the mail. Because he had applied for citizenship, he thought it was permissible to vote, his lawyer said. Now, he may be deported to Mexico after 16

years in the United States. “What I want is for them to leave me alone,” he said in an interview.

Federal prosecutors in Kansas and Missouri successfully prosecuted four people for multiple voting. Several claimed residency in each state and voted twice.

United States attorney’s offices in four other states did turn up instances of fraudulent voting in mostly rural areas. They were in the hard-to-extinguish tradition of vote buying, where local politicians offered \$5 to \$100 for individuals’ support.

#### Unease Over New Guidelines

Aside from those cases, nearly all the remaining 26 convictions from 2002 to and 2005 — the Justice Department will not release details about 2006 cases except to say they had 30 more convictions— were won against individuals acting independently, voter records and court documents show.

Previous guidelines had barred federal prosecutions of “isolated acts of individual wrongdoing” that were not part of schemes to corrupt elections. In most cases, prosecutors also had to prove an intent to commit fraud, not just an improper action.

That standard made some federal prosecutors uneasy about proceeding with charges, including David C. Iglesias, who was the United States attorney in New Mexico, and John McKay, the United States attorney in Seattle.

Although both found instances of improper registration or voting, they declined to bring charges, drawing criticism from prominent Republicans in their states. In Mr. Iglesias’s case, the complaints went to Mr. Bush. Both prosecutors were among those removed in December.

In the last year, the Justice Department has installed top prosecutors who may not be so reticent. In four states, the department has named interim or permanent prosecutors who have worked on election cases at Justice Department headquarters or for the Republican Party.

Bradley J. Schlozman has finished a year as interim United States attorney in Missouri, where he filed charges against four people accused of creating fake registration forms for nonexistent people. The forms could likely never be used in voting. The four worked for

a left-leaning group, Acorn, and reportedly faked registration cards to justify their wages. The cases were similar to one that Mr. Iglesias had declined to prosecute, saying he saw no intent to influence the outcome of an election.

“The decision to file those indictments was reviewed by Washington,” a spokesman for Mr. Schlozman, Don Ledford, said. “They gave us the go-ahead.”

*Sabrina Pacifici and Barclay Walsh contributed research.*

## **Election officials predict chaos, protest reform bill**

By Heidi Bruggink

April 12, 2007

Eyeing the passage of Rep. Rush Holt's (D-N.J.) election reform legislation, election officials are protesting what they believe is a poorly planned, even dangerous, set of changes.

The Voter Confidence and Increased Accountability Act of 2007, which boasts more than 200 bipartisan cosponsors, appeared to be sailing toward confirmation before Congress adjourned for Easter recess. However, the House Administration Committee vote was postponed unexpectedly after election officials from across the country testified before the Elections Subcommittee and scores of others contacted their representatives predicting problems that could make the 2000 and 2004 elections "look like the proverbial walk in the park."

"It was moving forward like a runaway train," a media relations manager at the National Association of Counties (NACo), James Philipps, said. "Then suddenly it was like, wait a minute — counties have something to say."

No one disputes the good intentions of the legislation, which would amend Article III of the Help America Vote Act of 2002 (HAVA) by requiring a voter-verified permanent paper ballot. However, NACo and election officials harbor misgivings with its mandate requiring audits of 10 percent of all votes, which could result in significantly delayed results and a timeline that leaves little opportunity to train election officials and poll workers. Further, the scheduled implementation occurs after many state legislatures have adjourned for the year.

"The unintended consequences of this could create complete electoral chaos," the registrar-recorder for Los Angeles County, Conny McCormack, said. "It hasn't been examined closely enough."

The act also requires states to purchase and implement new electronic voting equipment using undeveloped technology just two years after they did so to comply with HAVA requirements. "If passed, H.R. 811 will literally render millions of dollars worth of election equipment useless," Keith Cunningham of the Allen County (Ohio) Board of Elections said.

"The commission agreed to purchase the equipment [to comply with HAVA] through a loan, and we are still paying for the system," Brooke County (W.Va.) Clerk Sylvia Benzo said. "How can I justify [this] to the citizens?"

An associate legislative director at NACo, Alysoun McLaughlin, urged legislators to "take a look at the lessons of the Help America Vote Act" before attempting to pass additional election reform laws.

"With HAVA, there was a three-year window, and that timetable proved to be extremely optimistic," she said. "2008 is entirely unworkable."

Holt spokesman Matt Dennis said the lawmaker believes "the current timetable is workable" and "the importance of this legislation makes it essential that we get this in place for the 2008

election.”

Dennis also said the bill, Holt’s third iteration of election reform legislation, is the result of years of revision and study.

“At every stage [Holt’s] been soliciting the advice of election officials, voting activists, disability rights activists and other interested parties,” Dennis said. “He’s taking a lot of that advice and incorporating it into the legislation, and that’s reflected in this latest version.”

Philipps said that he shares Holt’s concerns but stressed, “state and local officials need to be at the table in shaping the language.”

The concerns of county officials have given some lawmakers pause.

“I support the objective of election accountability, and am committed to ensuring that American voters have complete confidence in our country’s voting systems,” Rep. Kevin McCarthy (R-Calif.) said. “However, after hearing from state and county election officials from across the country, I am concerned with a Washington one-size-fits-all approach that could disenfranchise disabled voters and create unrealistic and costly requirements on state and local jurisdictions.”

Dennis dismissed worries about the bill’s progress, saying delays “are to be expected as it moves further along and people start to pay more attention to it.” He pointed to the bill’s popularity in the House: Of the 200 cosponsors, none publicly have rescinded support since election officials voiced their concerns.

NACo hopes that even if the legislation succeeds in the House, the Senate will reconsider its implications.

“It’s too easy for the House to move forward on a bill and bump the hard questions to the Senate,” McLaughlin said. “We’re facing that challenge.”

An identical bill in the Senate, sponsored by Sen. Bill Nelson (D-Fla.), has stagnated in the Committee on Rules and Administration since being referred there Feb. 13. McLaughlin said Sen. Dianne Feinstein (D-Calif.) “has indicated that she will introduce alternate legislation and has solicited our feedback.”

“The next few weeks are critical,” Philipps said. “We’re hoping for a good result.”

Mr. EHLERS. Mr. Chairman, I just want to briefly lend my support to what the gentleman from California just stated. Mr. Lungren has made his case very clearly and very eloquently. I strongly support that. I just cannot, for the life of me, figure out what the opposition is. We have answered all the questions of the majority. We have made sure that others can establish an ID if they wish, and we would pay for it. If they don't have it, they simply sign their name saying that they are who they are.

There must be some other reason for opposing it. I would also just close by saying that if we don't pass something like this, I predict it is going to pass State by State probably through referendum or other means. Then once again, we will have a hodgepodge system. It would be much easier to have one law that covers the Nation, makes it very clear from State to State. With that, I will yield back.

The CHAIRMAN. Thank you. The question is on the McCarthy amendment Number 3.

All those in favor, signify by saying "aye."

Those opposed, "no."

No.

The noes have it.

Mr. MCCARTHY. Mr. Chairman, I request a roll call vote.

The CHAIRMAN. Roll call vote. Clerk please call the roll.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

[No response.]

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Yes.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No.

The noes are 5 the yeas are 3, the amendment fails.

Mr. LUNGREN. Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from California.

Mr. LUNGREN. Mr. Chairman I have Lungren Number 4.

The CHAIRMAN. Without objection, the amendment is considered as read and the gentleman is recognized for five minutes.

[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. DANIEL E. LUNGREN OF  
CALIFORNIA**

**Lungren amendment #4**

Strike section 3.

Amend section 4(b) to read as follows:

1       (b) AVAILABILITY OF ENFORCEMENT UNDER HELP  
2 AMERICA VOTE ACT OF 2002.—Section 401 of such Act  
3 (42 U.S.C. 15511) is amended by striking the period at  
4 the end and inserting the following: “, or the requirements  
5 of subtitle C of title III.”.

Mr. LUNGREN. Mr. Chairman, this goes to the provision of a private right of action contained in the bill and contained in the manager's amendment or substitute. This amendment would strike the provisions allowing individuals to bring action in a Federal court to enforce requirements contained in Title 3 of HAVA.

Already pursuant to HAVA, States have set up administration complaint procedures to provide sufficient Federal and State enforcement of the requirements.

This private right of action provision would open the DOJ and attorney general to thousands of claims and force the attorney general to respond in some manner to any complaint meeting the standards of the bill.

I fear the language is overly broad and will result in slowing down the process of determining election results and subject local governments to spend millions of dollars on what could be politically motivated lawsuits.

The DOJ if you examine their budget, in their current situation does not have the capacity of staff to handle the volume of potential claims.

You can promise something. You can give an authorization to a department such as DOJ, and the ability for something to get done may not be there.

I recall having 1,000 attorneys and 5,000 employees when I was attorney general of California, not nearly the size of the Federal DOJ, but nonetheless, you have limitations on your resources. And just because there is a law saying that it comes within your ambit, if you don't have a budget that allows you to do it, it just—the purpose of the law is frustrated.

And that is why, when under the preexisting law, HAVA, a requirement for the States to set up administrative complaint procedures, is now in place, you wonder why we change under this provision and open up private rights of action and require the DOJ or presumably require the DOJ and the attorney general to respond to the potential of thousands of claims.

The intent of the law, HAVA, was to improve elections, I thought, not to expand litigation.

As an old trial attorney, I love litigation. And some of my colleagues, and even I, on occasion, made money on litigation.

But, I also saw the limitations of litigation. And oftentimes, administrative complaint procedures worked far better than the formal court system.

The National Motor Voter Law has private right of action for claims. And there is section 1983 of the Civil Rights Act which is available if they qualify under that.

And so I would just ask that we reach a mid course correction here, which is to say that the administrative complaint procedures were established under HAVA, they exist, as I understand it, in all States, and that that allows for sufficient and timely enforcement of the requirements where this may very well lead to litigation with endless processes which would not allow for final determination of claims.

And with that I would yield back the balance of my time.

The CHAIRMAN. Thank the gentleman. Any other discussion on the amendment? The question is on the amendment.

All those in favor, signify by saying "aye."

Those opposed, "no."

No.

The noes have it.

Mr. LUNGREN. Mr. Chairman could I have a roll call vote on that.

The CHAIRMAN. Clerk please call the roll.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

[No response.]

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Ehlers.

[No response.]

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No. The noes are 5, the yeas are 2, the amendment fails.

Mr. MCCARTHY. Mr. Chairman, I have amendment Number 4.

The CHAIRMAN. I recognize Mr. McCarthy from California. Without objection the amendment is considered as read and you are recognized for five minutes.

[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. MCCARTHY**

**McCarthy amendment #4**

In section 301(d) of the Help America Vote Act of 2002, as proposed to be amended by section 2(e) of the matter proposed to be inserted by the substitute, add at the end the following new paragraph:

1           “(3) SUSPENSION OF CERTAIN REQUIREMENTS  
2           IN CASE OF UNAVAILABILITY OF REQUIREMENTS  
3           PAYMENTS.—The requirements of this section which  
4           are first imposed on a State and jurisdiction pursu-  
5           ant to the amendments made by section 2 of the  
6           Voter Confidence and Increased Accessibility Act of  
7           2007 shall not apply until the total amount appro-  
8           priated for requirements payments after the date of  
9           the enactment of that Act is equal to the amount  
10          authorized to be appropriated for such payments  
11          under section 257(a)(4).”.

In section 321 of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the matter proposed to be inserted by the substitute, add at the end the following new subsection:

1 (d) SUSPENSION OF REQUIREMENTS IN CASE OF  
2 UNAVAILABILITY OF FUNDING.—A State is not required  
3 to administer audits of the results of elections pursuant  
4 to this subtitle during any fiscal year for which the  
5 amount appropriated for payments to States under section  
6 326(e) does not equal or exceed the amount authorized  
7 to be appropriated for such payments under such section  
8 for the fiscal year.

Mr. MCCARTHY. I thank you for your patience Mr. Chairman. This is pretty straightforward. As we move forward, we have to remember where we have been. In these hearings, we have heard time and time again about just recently how we passed HAVA and that we have not funded HAVA, there is still approximately \$800 million that has not been funded through HAVA. A lot of States have spent a lot of money buying machines, going forward with counties and others. This would put an amendment into the bill that would suspend the requirements of this bill until the authorization amount of the money is fully appropriated.

Now why do I offer that? Is to build the trust. We have just forced these States to go through something saying this is the direction we wanted to go. Now we are coming full circle right back and saying we want you to do something else. We say we have authorized the money but history shows we have not funded it all the way. And I have come from State government. The first thing I have always had problems with was unfunded mandates. Now we are directing it. We say there is money there. All this is saying is that if that is truthful, if the money is there, there wouldn't be a problem because this would suspend the problem if the money is not there. If the money is there, there is no problem whatsoever. So to me it is a friendly amendment.

Mr. DAVIS of Alabama. Mr. Chairman, I move to adopt with respect to No Child Left Behind.

The CHAIRMAN. We get like that after 4 or 5 hours. Does anyone else want to be recognized? Discussion on the amendment? The question is on the amendment. All those in favor, signify by saying "aye."

All those opposed? No.

The noes have it.

Mr. MCCARTHY. Mr. Chairman I request a roll call vote.

The CHAIRMAN. Roll call vote by the Clerk please. McCarthy Number 4.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

[No response.]

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Aye.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No. The noes are 5, the yeas are 3, the amendment fails.

Mr. LUNGREN. Mr. Chairman, I think I have the last amendment.

The CHAIRMAN. Oh, whoopee.  
The Chair recognizes the gentleman from California, Mr. Lungren. Without objection, the amendment is considered as read and you are recognized for five minutes.  
[The information follows:]

**AMENDMENT TO SUBSTITUTE  
OFFERED BY MR. DANIEL E. LUNGREN OF  
CALIFORNIA**

**Lungren amendment #5**

In section 247(c) of the Help America Vote Act of 2002, as proposed to be added by section 2(b)(2)(A) of the matter proposed to be inserted by the substitute, strike “December 31, 2008” and insert “December 31, 2012”.

In section 301(a)(11)(C) of the Help America Vote Act of 2002, as proposed to be added by section 2(c)(1) of the matter proposed to be inserted by the substitute, strike “August 1, 2008” and insert “August 1, 2012”.

In section 2(e)(2)(C) of the matter proposed to be inserted by the substitute, strike “January 1, 2008” and insert “January 1, 2012”.

In section 257(a)(4) of the Help America Vote Act of 2002, as proposed to be added by section 2(d)(1) of the matter proposed to be inserted by the substitute, strike “fiscal year 2007” and insert “fiscal year 2011”.

In the heading of section 252(b)(2) of the Help America Vote Act of 2002, as proposed to be amended

by section 2(d)(2) of the matter proposed to be inserted by the substitute, strike “FISCAL YEAR 2007” and insert “FISCAL YEAR 2011”.

In section 252(b)(2)(A) of the Help America Vote Act of 2002, as proposed to be amended by section 2(d)(2) of the matter proposed to be inserted by the substitute, strike “fiscal year 2007” and insert “fiscal year 2011”.

In section 252(c) of the Help America Vote Act of 2002, as proposed to be amended by section 2(d)(3) of the matter proposed to be inserted by the substitute, strike “fiscal year 2007” each place it appears and insert “fiscal year 2011”.

In the heading of section 253(f) of the Help America Vote Act of 2002, as proposed to be added by section 2(d)(4) of the matter proposed to be inserted by the substitute, strike “FISCAL YEAR 2007” and insert “FISCAL YEAR 2011”.

In section 253(f) of the Help America Vote Act of 2002, as proposed to be added by section 2(d)(4) of the matter proposed to be inserted by the substitute, strike “fiscal year 2007” and insert “fiscal year 2011”.

In section 2(d)(7) of the matter proposed to be inserted by the substitute, strike “fiscal year 2007” and insert “fiscal year 2011”.

Amend section 2(e) of the matter proposed to be inserted by the substitute to read as follows:

1 (e) EFFECTIVE DATE FOR NEW REQUIREMENTS.—  
2 Section 301(d) of such Act (42 U.S.C. 15481(d)) is  
3 amended to read as follows:

4 “(d) EFFECTIVE DATE.—

5 “(1) IN GENERAL.—Except as provided in para-  
6 graph (2), each State and jurisdiction shall be re-  
7 quired to comply with the requirements of this sec-  
8 tion on and after January 1, 2006.

9 “(2) SPECIAL RULE FOR CERTAIN REQUIRE-  
10 MENTS.—The requirements of this section which are  
11 first imposed on a State and jurisdiction pursuant to  
12 the amendments made by section 2 of the Voter  
13 Confidence and Increased Accessibility Act of 2007  
14 shall apply with respect to the regularly scheduled  
15 general election for Federal office held in November  
16 2012 and each succeeding election for Federal of-  
17 fice.”.

In section 323(e)(2) of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the

matter proposed to be inserted by the substitute, strike “August 1, 2008” and insert “August 1, 2012”.

In section 324(d) of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the matter proposed to be inserted by the substitute, strike “March 31, 2008” and insert “March 31, 2012”.

In section 326(e) of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the matter proposed to be inserted by the substitute, strike “fiscal year 2008” and insert “fiscal year 2012”.

In section 328 of the Help America Vote Act of 2002, as proposed to be added by section 4(a) of the matter proposed to be inserted by the substitute, strike “November 2008” and insert “November 2012”.

In section 4(e)(1) of the matter proposed to be inserted by the substitute, strike “May 1, 2008” and insert “May 1, 2012”.

In section 6 of the matter proposed to be inserted by the substitute, strike “during 2008” and insert “during 2012”.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Chairman, this is a very simple amendment. It would delay implementations of the bill until 2012. Based on the testimony and the letters that we have received from election officials across the country, that the dates proscribed in the bill are unattainable. Testimony presented to the subcommittee on elections suggest that the changes that are required under this bill would require approximately 18 months to 4 years to accomplish.

As a matter of fact, the letter from the one disability organization, American Association of People with Disabilities, they believe it would be even longer. They suggest that we have a date of 2014, however being very reasonable I thought that was very too long. So my amendment has 2012 in it.

Mr. LUNGREN. There is no voting system currently certified and in use that meets the very specific requirements proposed in this bill, nor are there such systems available in the market that can be and have been or can be appropriately tested and certified for use through the EAC voting system certification program by the year 2008. State and local election officials and voters continue to absorb the sweeping changes brought about by our previous law, HAVA—almost sounds like a school on the East Coast as spoken of by some members from Massachusetts—but HAVA and State legislation. It is unrealistic for the States to implement all these new Federal mandates by 2008. Standards and guidelines should be established before requiring States to purchase this new voting equipment.

The bill before us unfortunately fails to recognize the need for public outreach and education associated with new voting equipment and procedures, including poll workers and poll worker training for these new machines. Compliant voting systems under this bill are limited. DRE systems that would comply do not exist at all. Ballot conversion equipment and software to meet the disability access requirements has not been tested or certified or used by any existing voting system. And when you realize we have what I consider to be unenforceable or absent penalties in this bill with respect to source code nonpublication information, then I think you understand we might even have more difficulty in getting vendors out there to participate.

A famous political scientist named “Dandy” Don Meredith once said, “If ifs and buts were candy and nuts, every day would be Christmas,” and it appears in many ways that’s what this bill is. We have been told that those who are out there that would be given the responsibility for doing this can’t do it. We have been doing that from counties as large as Los Angeles to counties as small as in my district in Amador County up in the mountains. And yet we carry on with this bill as if we believe it is going to happen because we wish it so. It would be wonderful if that is the way the world works, but it doesn’t.

So I am attempting to not do anything else in the bill. Everything else remains the same but delay implementation so that we can actually ensure that those things that we believe are required under this bill can actually come to fruition. So it is a delay of the implementation until the year 2012.

And with that, I yield back the balance of my time and I have no more amendments. I know the chairman will be disappointed to hear that.

The CHAIRMAN. I am having fun.

Ms. LOFGREN. Mr. Chairman.

The CHAIRMAN. Yes, the lady from California, Ms. Lofgren.

Ms. LOFGREN. I oppose the amendment and urge that all of my colleagues oppose the amendment. To delay this process, to delay the ability to recount in elections and to have a transparent process until 2012, which would be two Federal elections from now, is I think entirely unreasonable. The timing of the bill is not too aggressive. If we enact this promptly, I think there is adequate time to implement it. Those of us on the Election Subcommittee, I am sure all remember that the Republican Governor of Florida came and was a witness at our hearing. And he advised us at that hearing that the entire State of Florida is going to transition to an optical scan voting scheme before November 2008—actually before February was what he told us. We know that in the past jurisdictions have been able to transition rapidly. Aside from the fact that the bill, the substitute allows jurisdictions to retain their DREs equipped with thermal reel-to-reel printers or accessible voting systems that use or produce the paper trail until 2010, only the jurisdictions that use voting systems that had no voter-verified paper trail at all have to upgrade, and that is a small jurisdiction.

Take a look at New Mexico. New Mexico enacted a law March 2, 2006 requiring conversion from a mixed system with paperless electronic voting machines to a uniform statewide system using paper optical scan ballots with accessible ballot marking devices. All 33 counties fully deployed the system 8 months later in time for the 2006 mid-term election.

Nevada's then Secretary of State, now Representative Dean Heller, mandated in December of 2003 that the State would obtain new voting systems with voter-verified paper records. By the following August, just 8 months later, 16 of 17 counties deployed voter-verified paper record systems countywide in time for the primary, and all counties had them for the November 2004 presidential election.

In North Carolina they enacted a law requiring voter-verified paper records on August 26, 2005. Eight months later, in time for the May 2006 primary, the entire State had completed the conversion process, including RFP, testing certification and training to the new systems.

West Virginia enacted a law requiring voter-verified paper records in May of 2005. Every county had new voter-verified paper record equipment in place for the primary the following year.

What is at stake is whether we have another unverifiable Federal election, potentially a presidential election, the results of which might depend on one State, and the results in that State might not be independently verifiable because there are no voter-verified paper ballots. We don't have to put up with that. We can get this done in time for the 2008 election. We have ample waiver opportunities for those who have old systems, but I think it is time for the Congress to say enough is enough. Certainly we can ask States and localities to step forward and take the action that they

are capable of taking, as New Mexico did, as Nevada did, as North Carolina did, as West Virginia did, and as Florida is going to do.

I think that the amendment offered by the gentleman just guts this bill, and I hope that all of us will vote against it and, noting that the time is late, I will—

Mr. LUNGREN. Would the gentlelady yield?

Ms. LOFGREN. I will yield back to the chairman because he wants a vote.

The CHAIRMAN. Recognize Mr. Ehlers. Mr. Ehlers.

Mr. EHLERS. Thank you. First of all, I believe this amendment summarizes what needs to be done to make this a workable bill. This is just one aspect of it, but let me discuss the whole bill as a whole. I am really bothered by it. First of all, this authoritarian view that what we do in the United States Congress is the right way to do it. We don't care what the States think, we don't care what the local governments think, we don't care what the county clerks think, and we don't care what the city clerks think.

I show this stack of letters over two inches high, Indiana, Arizona, Iowa, North Dakota, West Virginia, Michigan, Ohio, South Carolina, Florida, Tennessee, Oregon, Colorado, Wyoming, Vermont, California, Kentucky, Los Angeles, which is not a State of its own, but I think most people know where it is. Arkansas, Georgia, Missouri, Pennsylvania, Virginia, Illinois, Maryland, North Carolina, Washington, New York, and so on down. I don't want to take all the time to list all of them. These people know what they are doing. They have to work with us. They all wrote in and said this bill is not good. It should not pass in its present form. And yet the majority insists on passing it just as is without a single word changed, not accepting any of our amendments.

I am also concerned about the attitude displayed by the majority, that somehow computers are bad, but paper is good. I think it is a gross mistake to require them to use one of the two alternatives without letting them use their own judgment.

This bill supersedes the judgments of the city clerks, and the county clerks, and the State election officials. It is simply wrong for us to force our ideas and our opinions on the good people of this country who are used to running elections, know how to do it, and know what problems this legislation brings.

Mr. Chairman, I have the highest respect for you. I know you are running for another office and I wish you well. I hope you make it. But I hope this bill doesn't pass. I would like to keep you here, by the way. I want to make it clear, but for your own benefit since you want the job, I hope you will get it. I also hope for your sake if you do get it that this bill doesn't pass because you would have to live with it.

The one consolation I have throughout all this is that I am sure the Senate will not accept the bill as it stands. I am sure they will drastically rewrite it, and I hope that it becomes a good bill before it becomes law. But I am very disappointed in the discussion today and the rejection of all of our amendments even though there is no logical argument why we should not accept them.

Ms. LOFGREN. Would the gentleman yield?

Mr. EHLERS. With that, I will yield back my time.

The CHAIRMAN. The gentleman from California, Mr. McCarthy.

Mr. MCCARTHY. Thank you, Mr. Chairman. I just want to clarify a few things that were said. I was here when the Governor of Florida came. He never endorsed this bill, and the legislation that Florida passed out down allows continued use of DRE machines without paper into 2012. We have gone through HAVA and it took 4 years. I come from a large State of California where we just made everybody switch. Just to put this out to bid, just to go forward—and we have moved our primary up. And to have this type of confusion in a year of a presidential election I don't think is the right way to go about it and does not really come to the commonsense as we move forward.

I listened to the Governor of Florida and I listened to each and every organization that represented election officials. They were unanimous in their approach that they thought this was the wrong way to go.

I yield back the balance of my time.

The CHAIRMAN. I thank the gentleman. Any other discussion? The question is on the amendment. All in favor signify—I am sorry. I recognize the gentleman from Texas.

Mr. GONZALEZ. I didn't know if this was the appropriate time. Mr. Chairman, I would just be asking unanimous consent at this time to be allowed to file today the papers of this hearing, that they be made part of the record. The statement of concern regarding the nature of H.R. 811 and the problems of electronic voting technologies and electronic ballots from the Puerto Rican Legal Defense and Education Fund.

Ms. LOFGREN. Would the gentleman yield?

Mr. GONZALEZ. Yes.

Ms. LOFGREN. I just wanted to briefly address the issue of amendments because we have not accepted amendments here today because we didn't agree with them, but I think it is important to note that when we postponed the markup last week we did look through the amendments that had been offered. We did adopt several of them in the substitute, and prior to the markup our staffs went through and scrubbed the substitute, making changes that were suggested by the majority in about eight instances.

So I understand the minority still disagrees with the bill, but I think it is important to note that we have tried to collaborate where we can.

I would further note that of the list of states that the ranking member just read, only six would have to make changes by 2008. In some cases—you know it reminds me of the election official from North Dakota who said gosh, you know, this would require optical voting systems. But his State already has optical voting systems. So I think there is a lot of resistance to change from individuals in States that have already fully complied with the act and with the substitute, and with that, I would yield back to Mr. Gonzalez and thank him for yielding me the time.

Mr. GONZALEZ. Thank you very much, Ms. Lofgren. Simply again, just ask for unanimous consent to allow me to file the statements.

The CHAIRMAN. Without objection, so ordered.

Mr. GONZALEZ. Thank you, Mr. Chairman.

[The information follows:]



MAY 2007

\*PUERTO RICAN LEGAL DEFENSE &amp; EDUCATION FUND, INC. (PRLDEF)\*

**STATEMENT OF CONCERN REGARDING H.R. 811 AND THE  
PROBLEMS OF ELECTRONIC VOTING TECHNOLOGIES AND  
ELECTRONIC BALLOTS**

*PRLDEF's Mission to Champion Civil Rights*

For the last 35 years, the Puerto Rican Legal Defense and Education Fund (PRLDEF), a New York based civil rights and advocacy organization, has used impact and class action litigation to set landmarks in protecting the civil and constitutional rights of Latinos. PRLDEF's work has sought to defend the U.S. Constitution, equal access to education, minority voting rights, immigrant rights, fair employment practices, and non-discrimination in housing.

In the 1970's and 1980's PRLDEF was instrumental in the passage of amendment provisions in the federal Voting Rights Act of 1965, which secured the voting rights of linguistic minorities in the United States. Since then we have been combating discriminatory gerrymandering in redistricting, promoting election reform and voter access, and advancing integrity in the U.S. census count in order to preserve our constituents' rights in civic participation and fair representation in government.

PRLDEF worked for the re-authorization of the key provisions of the Voting Rights Act, in the "The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006" which extended essential tools to protect the voting rights of linguistic minorities and others for 25 years. Our legal successes have advanced the practice of providing voting instructions and ballots in languages required by Latinos and other minorities.

In 2007, PRLDEF sees a different threat to voting rights, not only for Latinos and other minorities, but for all citizens. That threat is posed by and embedded in highly touted computerized electronic voting technologies.

*Ensuring Ballots Reflect Voter Intent*

PRLDEF joins other organizations and individuals committed to ensuring that federal election reform legislation upholds Section 301(a)(1)(A)(i) of the Help American Vote Act of 2002 (HAVA), which requires that all voting systems "permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted."<sup>1</sup>

While we support the improvements in language and disability access provided by Direct Record Electronic (DRE) voting machines, we have grave concerns about the so-called "ballots" these machines produce, which are nevertheless counted as the official ballots for the all-important initial tally. These "ballots" are nothing more than electrical charges inside the computer, which no voter can verify. Thus, voters cannot know with certainty that the votes cast and electronically recorded and counted, are, in fact, accurate and based on their own choices.

<sup>1</sup> Help America Vote Act of 2002. [http://www.fec.gov/hava/law\\_ext.txt](http://www.fec.gov/hava/law_ext.txt)

Currently, federal legislation such as H.R. 811,<sup>2</sup> has been proposed to improve upon this situation by requiring that voting machines provide a “voter-verified paper ballot” that the voter can immediately review and approve. This appears to be a step forward, but the provision is both misleading and insufficient. Under the proposed legislation, the paper printouts would not be considered the official ballots; they would only be counted in recounts or if they were randomly selected for an audit. Therefore, they are not actual ballots; they are just a paper trail and unlikely to ever be counted. The unverifiable cyberspace “ballot” in the computer’s memory would continue to be deemed the official ballot, even though it might not match the votes on the screen or those on the paper printout.<sup>3</sup> This regime is dangerous and unacceptable.

Recent elections in which electronic voting systems have been used confirm the existence of the types of problems that could be anticipated by the use of unverifiable ballots. Though not usually covered in national papers and media and thus kept under the radar, PRLDEF finds that an alarming number of aggregated accounts of voter complaints evidence serious problems in electronic-based voting machines,<sup>4</sup> including the widespread inexplicable “vote-flipping” phenomenon,<sup>5</sup> documented reports of votes disappearing from electronic voting machines,<sup>6</sup> reports of electronic systems adding votes,<sup>7</sup> and election disputes that could not be resolved because only the electronic “ballots” were available.<sup>8</sup>

Compounding these disruptions were operational failures of the machines, such as the failure to print out “zero tapes” to confirm that no votes were stored on the machines prior to the election, and failure to record write-in votes.<sup>9</sup> Florida and New Mexico experienced such severe electronic voting problems that those States have passed legislation outlawing the use of

<sup>2</sup> Voter Confidence and Increased Accessibility Act of 2007. <http://www.govtrack.us/congress/billtext.xpd?bill=h110-811>

<sup>3</sup> “A Deeper Look at ESI’s Report of the Discrepancy-Ridden Vote Counts In Diebold Touch-screen Voting Machines. August 23, 2006. <http://www.votersunite.org/info/ADeeperLook-ESI.pdf>

<sup>4</sup> Electronic Voting: a Failed Experiment. 183 Direct Record Electronic (DRE) Voting Machine Failures Reported in the News. March 10, 2007. <http://www.votersunite.org/info/DREFailedExperiment.pdf>

<sup>5</sup> “E-Voting Failures in the 2006 Mid-Term Elections: A sampling of problems across the nation”. January, 2007 (Sources: VotersUnite, VoteTrustUSA, VoterAction, and Pollworkers for Democracy) <http://www.votersunite.org/info/E-VotingIn2006Mid-Term.pdf>, pages 5-7.

<sup>6</sup> 4,532 votes lost in Carteret County, NC. 2004. “More than 4,500 North Carolina votes lost because of mistake in voting machine capacity.” USA Today. November 5, 2004. [http://www.usatoday.com/news/politics/elections/vote2004/2004-11-04-votes-lost\\_x.htm](http://www.usatoday.com/news/politics/elections/vote2004/2004-11-04-votes-lost_x.htm)

199 votes lost in Berks County, PA. 2005. “Election Problems in Berks County.” WFMZ.com. May 18, 2005. <http://wfmz.com/cgi-bin/ft.cgi?action=viewstory&storyid=3784>

5,000 votes lost in Dallas, TX. 2002. “Glitch affects 18 races; Problems in counting early votes could alter some election outcomes.” Dallas Morning News. May 8, 2002. Ed Housewright. Article archived at [http://www.votersunite.org/info/content/mess-up\\_072104.asp](http://www.votersunite.org/info/content/mess-up_072104.asp)

18,000 votes lost in Sarasota County, FL. 2006. “FL-13 task force will turn over investigation to GAO.” The Hill. May 3, 2007. By Aaron Blake. <http://thehill.com/campaign-2008/fl-13-task-force-will-turn-over-investigation-to-gao-2007-05-02.html>

<sup>7</sup> 3,893 votes added in Franklin County, OH. 2004. “Glitch Found in Ohio Counting.” New York Times. November 6, 2004. By John Schwartz. <http://www.nytimes.com/2004/11/06/politics/campaign/06ohio.html?ex=1257483600&en=16f49551a98f9208&ei=5090&partner=rssuserland>

2,087 presidential votes added in NM. 2004. “Summary Report on New Mexico State Election Data.”

HelpAmericaRecount.Org. January 4, 2005. by Ellen Theisen and Warren Stewart.

<http://www.votersunite.org/info/NewMexico2004ElectionDataReport-v2.pdf>

Hundreds of votes added in Miami-Dade, FL. 2005. “Discrepancies found in votes, signatures.” Miami Herald. May 7, 2005. By Noaki Schwartz and Jason Grotto. Article archived at <http://www.votersunite.org/article.asp?id=5361>

100,000 votes added in PA. Banfield v. Cortes, -- A.2d --, 2006 WL 4459432 (Pa. Cmwlth., April 12, 2007)

[http://www.voteraction.org/States/Pennsylvania/Documents/Legal/442MD06\\_4-12-07.pdf](http://www.voteraction.org/States/Pennsylvania/Documents/Legal/442MD06_4-12-07.pdf)

<sup>8</sup> Election declared invalid in Hinds County, MS. 2003. “District vote set; contender may quit.” Clarion Ledger. January 21, 2004. By Julie Goodman. <http://www.clarionledger.com/news/0401/21/ma04.html>

“FL-13 task force will turn over investigation to GAO.” The Hill. May 3, 2007. By Aaron Blake. <http://thehill.com/campaign-2008/fl-13-task-force-will-turn-over-investigation-to-gao-2007-05-02.html>

<sup>9</sup> Banfield et. al. v. Cortes, -- A.2d --, 2006 WL 4459432 (Pa. Cmwlth., April 12, 2007)

[http://www.voteraction.org/States/Pennsylvania/Documents/Legal/442MD06\\_4-12-07.pdf](http://www.voteraction.org/States/Pennsylvania/Documents/Legal/442MD06_4-12-07.pdf)

electronic “ballots,” though they preserved the use of DRE-type machines to provide accessibility.<sup>10</sup>

PRLDEF would support only election reform legislation that complies with HAVA and requires all voting systems to permit voters to verify the actual ballot that is cast and counted. This means that where DRE-type devices are used, they must produce a voter-verified paper ballot that would be the official ballot for all tallies and audits. Any voting technology used to produce these ballots must be accessible to minority language voters, including those with disabilities, and the official ballots must be verifiable by all citizens with the concomitant ability to verify with contemporaneous accessibility.

#### *Preventing Ethnic Profiling in the Voting Booth*

Technical experts and advocacy groups have brought to our attention the serious matter of electronic voting systems’ ability to process electronic ballots differently when different languages are chosen. Experience has taught us to be wary of differences in the treatment of different ethnic groups, since differences inevitably present opportunities for unjust discrimination.

Indeed, there is already evidence that these differences in processing may be discriminating against minority voters. Votes cast in Spanish were lost during a touch screen machine demonstration to the California legislature, but the system worked properly when English was chosen.<sup>11</sup> Touch-screen review screens failed to display votes properly when Spanish was selected in official parallel testing on election day in Palm Beach County, Florida.<sup>12</sup>

In New Mexico, during the 2004 election, electronic ballots in Hispanic and Native American precincts registered three times as many undervotes (no vote cast) as the electronic ballots in Anglo precincts. But when the state switched to paper ballots, the undervote rates in minority precincts were comparable to those in Anglo precincts.<sup>13</sup>

Disproportionate numbers of African-American votes were lost when electronic voting machines debuted in Miami-Dade County, Florida in 2002. The Florida ACLU reported, “*Not only are there a significant number of missing votes, but there’s also an alarming racial disparity in the errors that occurred during the last election.*”<sup>14</sup>

While electronic voting machines promise greater accessibility for voters with limited English proficiency and those who have disabilities, the opportunity they present for ethnic profiling by language choice is unacceptable. This is another reason why, whenever DRE-type

<sup>10</sup> “House stays past midnight to pass paper ballot proposal.” 15 February 2006. Associated Press. Archived at [http://www.voteraction.org/States/New\\_Mexico/NM.html](http://www.voteraction.org/States/New_Mexico/NM.html)

Governor Crist Applauds Legislature For Boldly Reforming Florida’s Elections. May 3, 2007 Press Release. <http://www.flgov.com/release/8957>

<sup>11</sup> “Wrong Time for an E-Vote Glitch”. Wired News. August 12, 2004. By Kim Zetter. <http://www.wired.com/politics/security/news/2004/08/64569>

“Lawmakers cut e-voting’s paper trail: Manufacturers demonstrating new printers in Nevada were embarrassed when machine failed to recognize votes.” Tri-Valley Herald. Ian Hoffman. August 13, 2004. Article archived at <http://www.votersunite.org/article.asp?id=2512>

<sup>12</sup> “Palm Beach County, Florida Parallel Testing Program Report of Findings, November 7, 2006 Election”. <http://www.votersunite.org/info/PalmBeachParallelTesting2006.pdf>, pages 26, 27, 29.

<sup>13</sup> “2004 and 2006 New Mexico Canvass Data Shows Undervote Rates Plummet in Minority Precincts When Paper Ballots are Used”. February 25, 2007. (Source: VotersUnite.Org) [http://www.votersunite.org/info/NM\\_UVbyBallotTypeandEthnicity.pdf](http://www.votersunite.org/info/NM_UVbyBallotTypeandEthnicity.pdf)

<sup>14</sup> “Analysis of September 10th Voting Fiasco in Miami Dade Demonstrates Disproportionate Impact on Racial Minorities, ACLU Says” October 21, 2002. [http://www.aclufl.org/news\\_events/archive/2002/racialimpactrelease.cfm](http://www.aclufl.org/news_events/archive/2002/racialimpactrelease.cfm)

devices are used to offer the necessary accessibility, paper ballots, which voters can verify, must be produced and those paper ballots must be deemed to be the official ballots for all counts.

*Using Voting Technology Wisely*

The right to vote is the fundamental right in this country. This right requires that all citizens have unfettered access to the ballot and that all citizens are able to cast ballots they know reflect their true choices. There is an expensive, spiraling, and unjustified dependency on computerized technology to ensure that our votes are properly and fairly cast, recorded, and respected in our democracy.

While PRLDEF applauds the accessibility that new voting systems can provide to voters with special needs, an unquestioning reliance on technology, however, must not be allowed to abridge each voter's right under HAVA to verify the real ballot.

Access to the polling place and access to a ballot in our own language are both essential to the right to vote. Yet, if we cannot even assure ourselves that our official ballots reflect our true choices, we might as well have lost the right to vote.

*PRLDEF's Principles In Support of HAVA Reform*

We, therefore, urge policy-makers and advocates to support the following principles:

- Voting technology must facilitate the free and private expression of each voter's intent, including those with limited English proficiency and those with disabilities, in compliance with the Voting Rights Act.
- Where DRE-type devices are used to facilitate access for language minority voters and voters with disabilities, the devices must produce a paper ballot which the voter can review and approve in whatever language or manner the voter requires in compliance with the Voting Rights Act, and that paper ballot must be the official ballot for all tallies and audits.
- All aspects of elections must be open and observable by the citizens.

***Puerto Rican Legal Defense & Education Fund (PRLDEF)***

99 Hudson Street, 14<sup>th</sup> Floor  
 New York, New York 10013  
 (212) 219-3360 (Tel) (800) 328-2322 (Toll Free)  
 (212)431-4276 (Fax)  
[www.PRLDEF.org](http://www.PRLDEF.org)

Contact: Cesar Perales, President & General Counsel  
 Jackson Chin, Associate Counsel

The CHAIRMAN. All those in favor of the Lungren amendment No. 5 signify by saying "aye." Any opposed "no." The noes have it. A roll call vote is requested.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

[No response.]

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Yes.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No.

The noes are 5, the yeas are 3. The amendment fails.

We are now on the substitute. Ms. Lofgren had to leave. We wanted to have some more discussion on the substitute. We will open the floor up for discussion on Ms. Lofgren's amendment in the nature of a substitute, as amended.

Mr. EHLERS. Mr. Chairman, I have already said my piece about the Lofgren substitute, and I just registered my dismay that the bill is passing in this form. I yield to any of my colleagues who wish to make a closing comment.

Mr. MCCARTHY. Mr. Chairman, I think we have had some lengthy debate here into the amendments and some of the concerns that we have with this bill, starting out the time, second the money. We had three hearings in the subcommittee, and I will tell you, election official after election official that does this came forward and said, there is real concerns about this. I have sat down and talked to many of them. They want to work with us. The Association of Counties, the Association of Elected Officials—that is not just your Secretaries of States. That is all the way down—are opposed to it. And I understand when Ms. Lofgren says we are not going to sit and wait for them just to support something all the way, but I do believe there is a way to do it where we can find common ground.

When we have a presidential election, when this society is able to be strong together with the trust they have in an election, and this is what this is about, bringing greater confidence, when we are not even going to deal with who is there to vote and we are going to predetermine who is the winner and loser, saying that the paper is always right even though we see elected officials come to us and say the paper jammed. So knowingly, we are voting for a bill that determines the outcome of an election, knowing that system doesn't always work right. We would rather have a checks and balance.

I believe there is an ability within this committee to craft a bill that is bipartisan, commonsense and that everybody can be behind.

That is where I would want to be. I would think when you are dealing with elections, you put people before politics. And I just feel frustrated with the outcome of which way I see this going.

Yield back my time.

Mr. LUNGREN. Mr. Ehlers, do you yield?

Mr. EHLERS. Yes, I would be pleased to yield to my colleague.

Mr. LUNGREN. I am with those who believe we ought to be concerned about the integrity of our system and that we ought to have a system in which our constituents have confidence, and that can come about in a number of ways. Evidently this bill has made the determination that paper is the way to do it. When I was a kid I remember playing rock, scissors, paper. But I guess now it is rock, scissors, paper and computer, and paper always wins. Now maybe that is what we have to do. I am just not convinced that we have made that determination appropriately yet. And also from my experience at the State level, maybe I am conditioned by this because I remember the FBI used to always come in and tell us they knew best. They always wanted information, they rarely shared information, but they knew better than we did on how to do things. And I hope we are not doing that with this bill because there does seem to be on the part of most of the election officials I know a desire to have a system that works well and a system that does have integrity within it. And the frustration I get from the folks back home is, you folks told us how to do it just a couple years ago. We tried in good faith to do it. Now you are telling us that didn't quite do it, so you are asking us to do something completely different, you are giving us less than half the time frame you gave us before, we saw you didn't give us the money that we needed last time. Please accept our promise you are going to get the money, and in reflecting on my experience at the State level, that is a whole lot to swallow and to accept.

And I just hope that we understand that this bill probably is not going to go very far in the Senate, and I don't say that as a threat because we ought to pass what we think is right and then deal with the Senate. But if in fact that is true, I hope we can come back and work on a bipartisan basis to do what I hope we all want to do, which is to extend the possibility of participation in our electoral process, give a greater sense of confidence in the integrity of our system and do it in a way that is user friendly, both to the voter and to the local and State officials that are required to enforce the law.

I thank the gentleman for yielding.

Mr. EHLERS. Thank you, Mr. Chairman. I agree totally with the statements of the two members on my side of the aisle. I yield back the balance of my time.

The CHAIRMAN. Thank you. The question is on agreeing to the Lofgren amendment in the nature of a substitute, as amended. All in favor signify by saying "aye." All those opposed "no." In the opinion of the Chair, the ayes have it.

Mr. EHLERS. I ask for a recorded vote.

The CHAIRMAN. Okay. I will help you along here. Recorded vote is requested. The Clerk will call the roll.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. Aye.

The CLERK. Mr. Capuano.  
 Mr. CAPUANO. Aye.  
 The CLERK. Mr. Gonzalez.  
 Mr. GONZALEZ. Aye.  
 The CLERK. Mrs. Davis of California.  
 Mrs. DAVIS of California. Aye.  
 The CLERK. Mr. Davis of Alabama.  
 Mr. DAVIS of Alabama. Aye.  
 The CLERK. Mr. Ehlers.  
 Mr. EHLERS. No.  
 The CLERK. Mr. Lungren.  
 Mr. LUNGREN. No.  
 The CLERK. Mr. McCarthy.  
 Mr. MCCARTHY. No.  
 The CLERK. Mr. Chairman.  
 The CHAIRMAN. Aye.

The ayes are 6, the noes are 3. The amendment in the nature of a substitute, as amended, is agreed to. The Chair now recognizes the gentlewoman from California to offer a motion.

Ms. LOFGREN. Mr. Chairman, I move that the Committee report the bill, H.R. 811, as amended, favorably to the House.

The CHAIRMAN. The motion is not debatable. Those in favor say "aye." Any opposed say "no." The ayes have it.

Mr. EHLERS. I ask for a roll call.

The CHAIRMAN. I will have the Clerk call the roll.

The CLERK. Ms. Lofgren.  
 Ms. LOFGREN. Aye.  
 The CLERK. Mr. Capuano.  
 Mr. CAPUANO. Aye.  
 The CLERK. Mr. Gonzalez.  
 Mr. GONZALEZ. Aye.  
 The CLERK. Mrs. Davis of California.  
 Mrs. DAVIS of California. Aye.  
 The CLERK. Mr. Davis of Alabama.  
 Mr. DAVIS of Alabama. Aye.  
 The CLERK. Mr. Ehlers.  
 Mr. EHLERS. No.  
 The CLERK. Mr. Lungren.  
 Mr. LUNGREN. No.  
 The CLERK. Mr. McCarthy.  
 Mr. MCCARTHY. No.  
 The CLERK. Mr. Chairman.  
 The CHAIRMAN. Aye.

The ayes are 6, the noes are 3. The motion is agreed to. Without objection, the motion to reconsider is laid upon the table and the bill as amended will be reported to the House.

Mr. EHLERS. Mr. Chairman?

The CHAIRMAN. Yes, Ranking Member, Mr. Ehlers.

Mr. EHLERS. Pursuant to clause 2(L) of House rule XI, I announce that I am requesting the two additional calendar days provided by that rule during which members may file supplemental minority or additional views for inclusion in the report to the House.

The CHAIRMAN. Members will have two additional days provided by House rules to file views. Without objection, the staff will be authorized to make technical and conforming changes to prepare H.R. 811 for filing.

We have a couple other pieces of business that we have to dispose of. The Committee will now consider four original resolutions to dismiss pending election contests. Each of these resolutions will then be reported to the House as privileged.

I now call up an original resolution relating to an election contest in the 5th District of Florida, the text of which is before the Members. Without objection, the first reading of the resolution will be dispensed with and the resolution shall be considered as read and open for amendment at any point. I now recognize the gentleman from California, Mrs. Davis.

[The information follows:]

.....  
(Original Signature of Member)

110TH CONGRESS  
1ST SESSION

**H. RES.** \_\_\_\_\_

Dismissing the election contest relating the office of Representative from  
the Fifth Congressional District of Florida.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

Mr. BRADY of Pennsylvania submitted the following resolution; which was  
referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**RESOLUTION**

Dismissing the election contest relating the office of Rep-  
resentative from the Fifth Congressional District of Flor-  
ida.

- 1       *Resolved*, That the election contest relating to the of-
- 2       fice of Representative from the Fifth Congressional Dis-
- 3       trict of Florida is dismissed.

Mrs. DAVIS of California. Mr. Chairman, we have reached a bipartisan agreement that the election contest relating to the 5th District of Florida is without merit and should be dismissed.

The CHAIRMAN. Any additional debate on the resolution? Mr. Ehlers agrees. The Chair recognizes the gentlewoman from California for the purpose of making a motion.

Mrs. DAVIS of California. Thank you, Mr. Chairman. I move that the Committee report favorably to the House an original resolution, the text of which is before us, to dismiss the election contest in the 5th District of Florida.

The CHAIRMAN. The question is on the motion by the gentlewoman from California. All those in favor say "aye." Any opposed? The ayes have it. The motion is agreed to.

Without objection, a motion to reconsider is laid upon the table. The resolution will be reported to the House. Members will have two additional days provided by House rules to file views.

I now call up an original resolution relating to an election contest in the 21st District, Florida, the text of which is before the Members. Without objection, the first reading of the resolution will be dispensed with and the resolution will be considered as read and open for amendment at any point. I recognize the gentlewoman from California.

[The information follows:]

.....  
(Original Signature of Member)

110TH CONGRESS  
1ST SESSION

## H. RES.

Dismissing the election contest relating the office of Representative from  
the Twenty-first Congressional District of Florida.

---

### IN THE HOUSE OF REPRESENTATIVES

Mr. BRADY of Pennsylvania submitted the following resolution; which was  
referred to the Committee on \_\_\_\_\_

---

## RESOLUTION

Dismissing the election contest relating the office of Rep-  
resentative from the Twenty-first Congressional District  
of Florida.

1       *Resolved*, That the election contest relating to the of-  
2       fice of Representative from the Twenty-first Congressional  
3       District of Florida is dismissed.

Mrs. DAVIS of California. Mr. Chairman, we have also reached a bipartisan agreement that the election contest relating to the 21st District of Florida is without merit and should be dismissed.

The CHAIRMAN. Is there any additional debate on the resolution?

Mr. EHLERS. The minority agrees.

The CHAIRMAN. The Chair recognizes the gentlewoman from California for the purpose of making a motion.

Mrs. DAVIS of California. Mr. Chairman, I move that the Committee report favorably to the House an original resolution, the text of which is before us, to dismiss the election contest in the 21st District of Florida.

The CHAIRMAN. The question is on the motion by the gentlewoman from California. All those in favor signify by saying "aye." Any opposed? The ayes have it. The motion is agreed to.

Without objection, a motion to reconsider is laid upon the table. The resolution will be reported to the House. Members have two additional days provided by House rules to file views.

I now call up an original resolution relating to an election contest in the 24th District of Florida, the text of which is before the Members. Without objection, the first reading of the resolution will be dispensed with and the resolution shall be considered as read and open for amendment at any point. I recognize again the gentlelady from California.

[The information follows:]

.....  
(Original Signature of Member)

110TH CONGRESS  
1ST SESSION

**H. RES.** \_\_\_\_\_

Dismissing the election contest relating the office of Representative from the Twenty-fourth Congressional District of Florida.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

Mr. BRADY of Pennsylvania submitted the following resolution; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**RESOLUTION**

Dismissing the election contest relating the office of Representative from the Twenty-fourth Congressional District of Florida.

1       *Resolved*, That the election contest relating to the of-  
2       fice of Representative from the Twenty-fourth Congres-  
3       sional District of Florida is dismissed.

Mrs. DAVIS of California. Thank you, Mr. Chairman. We have reached another bipartisan agreement on the election contest relating to the 24th District of Florida.

In this case, Mr. Chairman, I just want to mention because I know members have heard from individuals from the community. We certainly realize that Mr. Curtis and his supporters have worked very diligently to demonstrate that this contest merits further consideration. They have knocked on thousands of doors, and we recognize their dedication. But under our strong protection for secret ballots, the law can not recognize sworn affidavits as a substitute for votes cast via secret ballot. Under the Federal Contested Election Act, this contest fails to reach the necessary thresholds to warrant further consideration, and therefore it is also to be dismissed.

The CHAIRMAN. Thank you. Is there any additional debate on the resolution?

Mr. EHLERS. We agree.

The CHAIRMAN. The Chair recognizes the gentlewoman from California for the purpose of making a motion.

Mrs. DAVIS of California. Mr. Chairman, I move that the Committee report favorably to the House an original resolution, the text of which is before us, to dismiss the election contest in the 24th District of Florida.

The CHAIRMAN. The question is on the motion by the gentlewoman from California. All those in favor signify by saying "aye." Opposed? The ayes have it. The motion is agreed to.

Without objection a motion to reconsider is laid upon the table. The resolution will be reported to the House. Members will have two additional days provided by House rules to file views.

Finally, I call up an original resolution relating to an election contest in the 4th District of Louisiana, the text of which is before the Members.

Without objection, the first reading of the resolution will be dispensed with, and the resolution shall be considered as read and open for amendment at any point. I recognize the gentlewoman from California.

[The information follows:]

.....  
(Original Signature of Member)

110TH CONGRESS  
1ST SESSION

**H. RES.** \_\_\_\_\_

Dismissing the election contest relating the office of Representative from  
the Fourth Congressional District of Louisiana.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

Mr. BRADY of Pennsylvania submitted the following resolution; which was  
referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**RESOLUTION**

Dismissing the election contest relating the office of Rep-  
resentative from the Fourth Congressional District of  
Louisiana.

- 1       *Resolved*, That the election contest relating to the of-
- 2       fice of Representative from the Fourth Congressional Dis-
- 3       trict of Louisiana is dismissed.

Mrs. DAVIS of California. Thank you, Mr. Chairman. We have indeed reached another bipartisan agreement that the election contest relating to the 4th District of Louisiana, that this case is not a proper subject for a contest brought under FCEA and should be dismissed.

The CHAIRMAN. Is there any additional debate on the resolution?

Mr. EHLERS. The minority agrees.

The CHAIRMAN. The Chair recognizes the gentlewoman from California for the purpose of making a motion.

Mrs. DAVIS of California. Mr. Chairman, I move that the Committee report favorably to the House an original resolution, the text of which is before us, to dismiss the election contest in the 4th District of Louisiana.

The CHAIRMAN. The question is on the motion by the gentlewoman from California. All those in favor signify by saying "aye." Any opposed? The "ayes" have it. The motion is agreed to.

Without objection, the motion to reconsider is laid upon the table. The resolution will be reported to the House. Without objection, the staff will be authorized to make technical and conforming changes to prepare each of the four resolutions for filing.

The final item of business today is approval of a Committee resolution to approve franked mail allowances for the standing and select committees of the House for the 110th Congress.

The Chair now calls up Committee Resolution No. 4, which is before the Members. Without objection, the first reading will be dispensed with, and without objection, the Committee resolution will be considered as read and open for amendment.

[The information follows:]

**COMMITTEE ON HOUSE ADMINISTRATION**Committee Resolution **110 - 4**110<sup>TH</sup> Congress Franked Mail Allowances for Committees

Adopted on \_\_\_\_\_, 2007

- 1 **Resolved** pursuant to Public Law 101-520 § 311 (e) [2 USC 59e(e)] that  
 2 effective January 3, 2007, and during the first session of the One Hundred  
 3 Tenth Congress, the allocation of the Official Mail Allowance for the  
 4 following committees of the House of Representatives shall be set as  
 5 follows:

Committee on Agriculture	\$5000
Committee on Armed Services	\$5000
Committee on the Budget	\$5000
Committee on Education and Labor	\$5000
Committee on Energy and Commerce	\$5000
Committee on Financial Services	\$5000
Committee on Foreign Affairs	\$5000
Committee on Homeland Security	\$5000
Committee on House Administration	\$5000
Committee on the Judiciary	\$5000
Committee on Natural Resources	\$5000
Committee on Oversight and Government Reform	\$5000
Committee on Rules	\$5000
Committee on Science and Technology	\$5000
Committee on Small Business	\$5000
Committee on Standards of Official Conduct	\$5000
Committee on Transportation and Infrastructure	\$5000
Committee on Veterans' Affairs	\$5000
Committee on Ways and Means	\$5000
Permanent Select Committee on Intelligence	\$5000
Select Committee on Energy Independence and Global Warming	\$5000

5 ***Resolved further*** pursuant to Public Law 101-520 § 311 (e) [2 USC 59e(e)]  
 6 that effective January 3, 2008, and during the second session of the One  
 7 Hundred Tenth Congress, the allocation of the Official Mail Allowance for  
 8 the following committees of the House of Representatives shall be set as  
 9 follows:

Committee on Agriculture	\$5000
Committee on Armed Services	\$5000
Committee on the Budget	\$5000
Committee on Education and Labor	\$5000
Committee on Energy and Commerce	\$5000
Committee on Financial Services	\$5000
Committee on Foreign Affairs	\$5000
Committee on Homeland Security	\$5000
Committee on House Administration	\$5000
Committee on the Judiciary	\$5000
Committee on Natural Resources	\$5000
Committee on Oversight and Government Reform	\$5000
Committee on Rules	\$5000
Committee on Science and Technology	\$5000
Committee on Small Business	\$5000
Committee on Standards of Official Conduct	\$5000
Committee on Transportation and Infrastructure	\$5000
Committee on Veterans' Affairs	\$5000
Committee on Ways and Means	\$5000
Permanent Select Committee on Intelligence	\$5000
Select Committee on Energy Independence and Global Warming	\$5000

The CHAIRMAN. Committee Resolution No. 4 provides franking funds for committees and select committees for the 110th Congress and is not sent to the House floor. Our Committee is responsible under statute for limiting the amount of franking funds each committee may spend. The franking allocation is unrelated to the operating budgets that we give committees in the omnibus funding resolution. We adopted a similar version of this resolution two years ago with the same \$5,000 with bipartisan support.

I will inform each Committee Chairman of our action today. If any committee needs, and can justify, additional franking funds, I will bring that request back to House Administration for consideration.

The Chair now recognizes the Ranking Member.

Without objection, the previous question is ordered. The question is now on agreeing to Committee Resolution No. 4. All those in favor say "aye," those opposed "no." The "ayes" have it. The Committee resolution is agreed to.

Without objection, the motion to reconsider is laid upon the table. Without objection, the staff will be authorized to make any technical and conforming changes to the Committee resolution.

One more announcement of "interim authority" actions. The Chair would like to conclude by making an announcement of the exercise of "interim authority" on behalf of the Committee. This announcement is usually done at the organizational meeting. With the Chairwoman no longer with us, I will complete the process today.

The Chairwoman undertook the following actions on behalf of the Committee in the 110th Congress prior to its organization. She approved 5 consultant contracts, 15 detailee requests, and 5 Federal retirement waivers. In addition, she requested the preservation of equipment relevant to the pending election contest. I am not aware of any other actions under interim authority.

There being no more further business before us, the Committee stands adjourned.

[Whereupon, at 5:34 p.m., the Committee was adjourned.]

[Information follows:]



ADVANCING EQUALITY

April 16, 2007

As national and local organizations representing the needs and concerns facing minority language voters, we write today encouraging lawmakers to accommodate not only the need for additional security in our elections, but also to demand appropriate accessibility for all communities. Nothing stated in this letter should be construed as specific support for HR. 811, the "Voter Confidence and Increased Accessibility Act of 2007," which would require voter-verified paper trails for electronic voting machines by the November 2008 elections.

In the wake of the 2000 presidential elections and a Caltech and MIT study finding that some four million Americans were disenfranchised, the Help America Vote Act (HAVA) was enacted to address serious problems with our election system. Designed to provide more access to the election process for all voters, including language minorities, HAVA set forth a number of provisions to increase voter participation by eradicating some of the problems found in the 2000 election and proactively providing for technology that would offer independent voting for some communities who to that point in time were not able to vote privately. Unfortunately, despite the promise of HAVA, we still see that many of these same problems exist, even in the most recent elections in 2006 and the election process is not necessarily any more accessible than before HAVA.

As a result of HAVA deadlines, the widespread replacement of older voter technology meant more voters and poll workers throughout the nation used new voting systems in 2006 than in any previous election, which has caused some confusion due to lack of proper voter and poll worker education. Adding to the confusion is the lack of education and training on Sections 203 and 4(f)(4) in covered states or jurisdictions which require the jurisdiction to provide language assistance, including translated voting materials. The requirements of the law are straightforward and were created because it was found language minority citizens have been effectively excluded from participation in the electoral process. While these problems must be addressed, we must continue to ensure that any new technology fully accommodates all voting communities, particularly those with limited English proficiency, and we must not prohibit the use of existing technology that provides such accommodation.

Our organizations are committed to ensuring that any new voting standards maintain the current accessibility protections afforded under HAVA and that all voting machines provide the necessary language translations in all steps of the voting process as required under Section 203 of the Voting Rights Act. We support the idea that states should have the flexibility to decide which types of election systems best meet the needs of its voting population, therefore acknowledging that the best system for Provo, Utah might not be the best system for Los Angeles or New York City. **Accordingly, we would oppose federal legislation that would ban states from using direct electronic recording voting systems.**

1140 Connecticut Ave. NW, Suite 1200, Washington, D.C. 20036 • T 202.296.2300 • F 202.296.2318 • [www.advancingequality.org](http://www.advancingequality.org)

AFFILIATES: Asian Pacific American Legal Center in Los Angeles • Asian Law Caucus in San Francisco • Asian American Institute in Chicago

Conclusion

Taken together these principles regarding voting machine technology will ensure that any comprehensive election reform introduced will be developed with clear articulated standards on how to fix the problems. Ensuring fair elections must be an urgent, bipartisan priority. Indeed, our goal is to ensure that every minority language voter has the same access as any other voter to cast a vote and have that vote counted. If our government finds the right to vote the epitome of citizenship, we cannot justify denying citizens that right because of lesser skills in English, and the denial of an accessible voting medium to minority language voters.

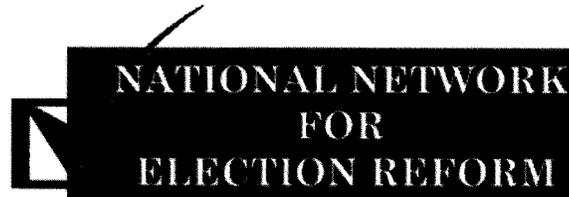
Sincerely Yours,

National Organizations:

Asian American Justice Center  
 Asian and Pacific Islander American Vote (APIAVote)  
 Asian Pacific American Labor Alliance  
 Japanese American Citizens League  
 Mexican American Legal Defense & Educational Fund  
 National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund  
 National Council of La Raza  
 National Korean American Service & Education Consortium (NAKASEC)

Local Organizations:

Asian American Institute (Chicago, Illinois)  
 Asian American Legal Defense and Education Fund (New York, New York)  
 Asian Pacific American Legal Center (Los Angeles, California)  
 Asian Pacific American Chamber of Commerce (Auburn Hills, Michigan)  
 Asian Law Alliance (San Jose, California)  
 OCA Greater Houston (Houston, Texas)  
 Asian Pacific American Heritage Association of Houston (Houston, Texas)  
 APALA - Houston (Arlington, Texas)



May 8, 2007

Dear Member of Congress,

Attached is a letter sent by the National Network for Election Reform in response to the most recent attempt to pass additional photo-identification requirements in the 109th Congress. It is our understanding that a similarly focused amendment will be offered during the markup of H.R. 811, the Voter Confidence and Increased Accessibility Act of 2007. On behalf of the National Network for Election Reform, we wish to reiterate our continued opposition to such attempts and encourage Committee members to oppose any such amendment should it be offered. Thank you.

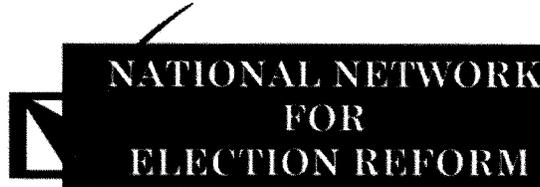
Signed,

A handwritten signature in cursive script, appearing to read "Tanya Clay House".

Tanya Clay House  
Director, Public Policy  
People For the American Way

A handwritten signature in cursive script, appearing to read "Jonah Goldman".

Jonah Goldman  
Director, National Campaign for Fair Elections  
Lawyers' Committee for Civil Rights Under Law



September 19, 2006

Dear Member of Congress,

We write on behalf of the National Network for Election Reform in strong opposition to H.R. 4844, the deceptively titled "Federal Election Integrity Act of 2006." The National Network is a coalition of organizations committed to providing Americans with a responsive and fair election system. As written, the bill will sacrifice the integrity of our electoral process by imposing an unfunded mandate on the states and blocking countless eligible seniors, minority voters, poor voters, students and young voters, and voters with disabilities from the polls. Moreover, H.R. 4844 will do nothing to address the shortcomings with America's electoral infrastructure. Instead, by passing H.R. 4844, Congress will create a 21<sup>st</sup> Century poll tax.

In August, Congress demonstrated its commitment to a fair and open democratic process by reauthorizing the expiring provisions of the Voting Rights Act with unprecedented bi-partisan unity. Passing H.R. 4844 will undermine that noble pursuit by disfranchising the very Americans that the Voting Rights Act protects.

H.R. 4844 will require nearly every eligible American voter to navigate a new and complex bureaucracy in order to cast a ballot. Additionally, this measure will force the vast majority of states to implement an incredibly costly new process for issuing identification. The bill's central provision requires all eligible voters to produce a government-issued photo identification before participating in the electoral process. According to the mandates of the bill, the only acceptable form of identification is one that requires proof of citizenship as a condition of its issuance and indicates citizenship status on the face of the identification. Currently, the only types of identification that satisfy this requirement are a few states' driver's licenses, and a United States Passport – which, according to the Bureau of Consular Affairs, only 25-27% of Americans have. For the rest of the country, state governments will have to develop and issue new identification in order to facilitate voting in federal elections.

Designing and implementing a program that will facilitate identification to comply with H.R. 4844 will be an unprecedented burden on state governments. A recent example portends the drastic complications that states will have to navigate in order to meet the demands of H.R. 4844. In 2002, Congress created the Transportation Workers Identity Credential, a program to provide identification similar to that required by H.R. 4844 for the nation's 750,000 critical sea, air and land transportation facility workers by the end of 2003. Nearly three years past the deadline, fewer than 5,000 of these workers have been issued this identification and the program costs have skyrocketed, nearly doubling from the original projections. This demonstrates that requiring the vast majority of states to engage in this type of endeavor for nearly 200 million Americans is not only unworkable, but irresponsible.

The unfunded mandate that this bill will create, coupled with the financially precarious situation of many state budgets, means that citizens will be burdened with the increased cost of this program. In addition to the high price that many voters will be forced to pay to obtain this new form of identification, each voter will also be required to produce proof of citizenship. Official citizenship documents, such as birth certificates, passports or naturalization papers, are expensive and time-consuming to obtain. While this burden is heavy on all Americans, voters in poor and minority communities, seniors, students and young voters, voters with disabilities, and Americans in rural areas



are the voters who are least likely to have documents that prove their citizenship and are the least likely to be able to afford the increased cost of obtaining both the underlying documentation and the new identification required by H.R. 4844. Requiring citizens to pay for these documents as a prerequisite to voting constitutes a poll tax in violation of the Twenty-Fourth Amendment to the United States Constitution.

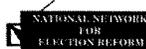
Proponents of H.R. 4844 claim that this measure is necessary to prevent misconduct in elections; that assertion, however, is contradicted by overwhelming evidence. There are no facts to suggest our elections are plagued by a wave of individuals voting multiple times or voting as someone else. Likewise, despite detailed investigations across the country, there is almost no evidence of non-citizens voting. This is not surprising since each act of this type of voter fraud carries with it possible penalties of five years in prison and a \$10,000 fine. Individuals know that the risk is not worth the cost. In addition to these harsh penalties, non-citizens would sacrifice their ability to become citizens or remain in this country legally. Undocumented immigrants would risk announcing their presence to a government official each time they attempted to register or vote. Effective safeguards are already in place to protect election results from being manipulated by ineligible voters.

H.R. 4844 will do nothing to address the systemic problems that plague our democratic process nor will it effectively secure our election administration system. Because of the bill's failure to address the needs of American voters, it will not restore public confidence in the electoral process. Since the presidential election in 2000, voters across the country have begun to notice the shortcomings in our electoral system. Congress has the opportunity to address the real obstacles that voters face each time they go to the polling place; unfortunately, H.R. 4844 chooses instead to create additional barriers.

We oppose H.R. 4844, the "Federal Election Integrity Act of 2006," because it imposes an unfunded mandate on the states and blocks countless eligible voters from the electoral process. We urge you to oppose H.R. 4844. For more information, please contact Jonah Goldman, Lawyers' Committee for Civil Rights Under Law, (202) 662-8321 or Tanya Clay House, People For the American Way, (202) 467-2341.

Signed,

African American Ministers in Action	NAACP
American Association of University Women	National Congress of American Indians
American Jewish Committee	National Council of Jewish Women
Anti-Defamation League	National Disability Rights Network
Asian American Justice Center	National Education Association
Asian American Legal Defense and Education Fund	National Voting Rights Institute
Brennan Center for Justice	People For the American Way
Common Cause	Project Vote
Demos	Rock the Vote
Electronic Frontier Foundation	Service Employees International Union
FairVote	The Arc of the United States
Jewish Council for Public Affairs	Union for Reform Judaism
Lawyers' Committee for Civil Rights Under Law	United Cerebral Palsy
League of United Latin American Citizens	United Church of Christ Justice & Witness Ministries
League of Young Voters Education Fund	U.S. PIRG
Mexican American Legal Defense and Educational Fund	Vote By Mail Project
MassVote	





May 8, 2007

House Administration Committee  
United States House of Representatives  
Washington, DC 20515

Dear Committee Member:

On behalf of the more than one million members and activists of People For the American Way (PFAW), we write in support of the Voter Confidence and Increased Accessibility Act of 2007 (H.R. 811) introduced by Representative Holt, and also to oppose any photo-identification amendments that may be offered to this worthwhile bill. This much needed legislation is likely to lead to major improvements over the status quo, diminishing voting machine problems and making elections safer and more secure.

Unfortunately – with millions of voters disenfranchised each election cycle – our citizens have lost confidence that their votes are counted accurately - or even counted at all. The recent debacle in Sarasota County, where some 18,000 votes were inexplicably not recorded on the paperless voting machines, is only the tip of the iceberg. Poll after poll shows the impact of voting irregularities on people's faith in our electoral system. H.R. 811 addresses this national crisis.

Most importantly, H.R. 811 gives voters a chance to verify that their vote was recorded properly before they leave the booth. Under H.R. 811, all voting machines must produce a paper ballot that would count as the official ballot for purposes of all recounts. In addition, H.R. 811 contains two very important safeguards. It requires voting machine vendors to provide independent access to their machines source codes to permit inspections to verify the integrity of elections without compromising ballot secrecy. And it requires manual audits of all voting machines pursuant to established federal standards.

H.R. 811 also goes a long way toward protecting voters with disabilities and language minority voters' access to the ballot box. Voters whose primary language is not English will be able to make the best and most informed choice at the polls. It will also allow voters with disabilities to cast their ballots with the privacy and dignity we all expect.

**Additionally**, in the spirit of moving H.R. 811 forward in a bipartisan fashion, we urge you to oppose any amendment that would add to this legislation language requiring that voters provide photo identification before casting a ballot. Such requirements are unnecessary and harmful. They impose a severe burden and are likely to disenfranchise poor, minority, elderly and young voters, who are less likely to have photo identification and move more frequently. The data is clear:

- Approximately 6 to 10% of the American electorate does not have any form of state identification.
- African Americans are four to five times less likely than whites to have photo identification.
- Young adults (age 20-29) move almost 6 times more frequently than adults over 55, and minorities move 50% more frequently than whites.
- In Georgia, it is estimated that nearly 40% of seniors lack photo identification.

The purported reason for enacting such restrictive voting measures to counteract voter fraud is unsubstantiated. Virtually every academic study of voter fraud concludes that it is not close to being a significant problem. In fact, in 2002 the Bush Justice Department launched the "Voting Access and Integrity Initiative," which directed Justice Department attorneys, including those in U.S. Attorneys'

offices, to prioritize investigations of alleged voter fraud. Despite being a top priority, this initiative resulted in only 24 convictions for illegally voting nationwide from 2002 to 2005, compared to the hundreds of millions of votes cast during that period. Even bipartisan experts contracted by the Election Assistance Commission (EAC) similarly found, in a report they submitted to the EAC in 2006, that there is no widespread existence of voter fraud.

Furthermore, when questioned regarding the existence of voter fraud in states where it was used as the justification for requiring restrictive voter identification, supporters of voter identification have been consistently forced to testify that they cannot prove that any widespread voter fraud exists. Examples include:

- The State of Indiana, and its Republican Secretary of State Todd Rokita, in defending the voter identification law in court documents, admitted that it could not find one single instance of voter impersonation fraud in the history of the state. *Indiana Democratic Party v. Rokita*, 2006 U.S. Dist. LEXIS 20321 (S.D. Ind. 2006).
- The Republican Governor of Missouri, who had formerly been the Secretary of State (and run Missouri's elections), admitted that elections in Missouri were "fraud-free," before unsuccessfully defending the restrictive voter identification laws in court. *Weinschenk v. Missouri*, 203 S.W.3d 201 (Mo. 2006). Missouri's Secretary of State agrees, noting in a recent report that "As in previous elections, the absence of reports of voting impersonation or voting fraud in the 2006 election in Missouri was notable."
- The State of Arizona and its counties, in defending their restrictive voter registration laws and voter identification laws, admitted that, of the over 2.7 million registered voters in Arizona, not one had been convicted of registering to vote illegally, and not one instance of voting by an ineligible non-citizen.

Voter identification proposals unnecessarily erect barriers to the ballot and are likely to be enforced in discriminatory ways against poor and minority voters to intimidate, misinform, stigmatize, and ultimately suppress the vote. The right to vote is fundamental and Congress should be focused on ways to open the franchise to all eligible citizens. Consistent with this view, PFAW urges that photo identification requirements be opposed in hopes of passing a bipartisan H.R. 811.

Make no mistake: the need for election reform in this country is urgent. Americans deserve to know that the next time they cast a vote it will be counted – and, if necessary, recounted, by fair and independent observers. Nothing less than the integrity and fairness of the 2008 elections is at stake. Congress must act immediately to pass H.R. 811. We urge you to support H.R. 811 as it moves toward passage by voting in favor of it during the committee markup.

Sincerely,



Ralph G. Neas  
President



Tanya Clay House  
Director, Public Policy



May 8, 2007

The Honorable Vernon Ehlers, Ranking Member  
Committee on House Administration  
U.S. House of Representatives  
1319 Longworth House Office Building  
Washington, D.C. 20515

Dear Representative Ehlers:

I am writing to offer the support of the National Association of Counties for the "Voting Enhancement and Security Act of 2007".

Responsibility for the conduct and accompanied cost of elections is historically that of state and county governments throughout America. Accordingly, ensuring the accuracy and integrity of that process is the responsibility of county election officials. However, the National Association of Counties recognizes our partnership role with the federal government and has consistently maintained that we would support federal legislation to ensure the accuracy and integrity of voting equipment and procedures and the transparency of audits and recounts as long as that legislation sets realistic standards and allows sufficient time, flexibility and funding for implementation.

Accordingly, we support your substitute amendment to H.R. 811, which would direct the National Institute of Standards and Technology to set standards for voting equipment and provide states with time and flexibility to implement those standards, and which would permit states the flexibility to adopt audit and election security and contingency plans that are designed for and suited to the needs of their own local jurisdictions.

We applaud your leadership on this critical issue. If you have any questions, please contact Alysoun McLaughlin, Associate Legislative Director, at 202-942-4254 or [amclaughlin@naco.org](mailto:amclaughlin@naco.org).

Sincerely yours,

A handwritten signature in black ink that reads "Larry E. Naake". The signature is written in a cursive style with a large, prominent "L" and "N".

Larry E. Naake  
Executive Director



**AAPD**  
 American Association  
 of People with Disabilities

MAY 07 2007

April 26, 2007

The Honorable Vernon Ehlers  
 2182 Rayburn House Office Building  
 Washington, DC 20515

Dear Representative Ehlers:

The American Association of People with Disabilities (AAPD) is the nation's largest cross-disability membership organization. Our mission is to increase the political and economic power of the more than 50 million children and adults living with disabilities in the United States.

AAPD opposes passage of H.R. 811  *Voter Confidence and Increase Accessibility Act* in its current form. This bill, as written, does not adhere to the  *Help America Vote Act of 2002* (HAVA) requirement that voting systems be accessible to voters with disabilities "in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters."

AAPD supports voting systems that are accessible, secure, accurate and recountable. In order for AAPD to support H.R. 811, it would require delaying the implementation date to 2014 and appropriating at least \$1 billion for research, development, testing and purchasing of accessible paper-based voting systems. A 2014 implementation date is realistic based on the experience of voting equipment manufacturers and election officials. It takes years to develop new system standards and test protocols, design and beta test equipment, certify and purchase equipment, and train election officials and poll workers.

H.R. 811 as written would amend HAVA by making a number of major changes to the nation's election systems. It requires all changes to be in place for the primaries in next year's presidential election. If enacted into law, H.R. 811 will require that all polling places use equipment in the 2008 presidential race that can produce an accessible, voter-verifiable paper ballot. When this bill's paper ballot requirement is coupled with the access requirements of HAVA, it will require election officials to purchase technology that does not currently exist.

Reliable estimates to develop, deploy and certify this technology range from five to ten years. In addition, H.R. 811 requires the federal government to study how best to make its voter-verifiable paper ballot accessible to voters with a wide range of disabilities, and

1629 K Street NW, Suite 503 Washington, DC 20006  
 phone 202-457-0046 (V/TTY) 800-840-8844 (V/TTY) fax 202-457-0473 www.aapd-dc.org



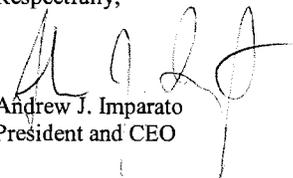
The Honorable Vernon Ehlers  
April 26, 2007  
Page 2

this important study. In the absence of these findings, how can election officials move forward with a 2008 deadline for accessible paper ballots?

HAVA's requirement that all polling places have at least one accessible voting machine by 2006 has resulted in significant improvements in voting access since the 2002 elections. AAPD does not want to see the nation move backwards on accessible voting technology. We therefore urge you to vote no on the passage of H.R. 811 and protect the rights of people with disabilities to vote privately and independently.

Your thoughtful consideration of this critical issue and fundamental right – voting – is appreciated.

Respectfully,



Andrew J. Imparato  
President and CEO

[More Like This](#) | [More Like Selected Text](#)

**NewsRoom**

10/9/04 **Newsday** A67  
2004 WLNR 1090294

**Newsday** (USA)

Copyright © 2003 Newsday Inc. All rights reserved.

October 9, 2004

Section: OPINION

Touch-screen voting should be a help

**TED SELKER.** Ted Selker is co-director of the Caltech/MIT Voting Technology Project and an associate professor of media arts and sciences at the Massachusetts Institute of Technology.

Roughly a third of U.S. voters in the November election are expected to use electronic voting machines. In California, any county using these machines also must provide the option of a paper ballot. This may comfort those who are "freaking out" (to quote the head of a voting advocacy group) that their vote somehow won't count if made on a computer screen. But they are making a false assumption that paper is safer than electronic records.

In fact, electronic voting machines offer the safest voting method currently available - provided that their use is carefully supervised and monitored.

The 29 percent of Americans who will vote electronically in California, 28 other states and the District of Columbia don't have to worry about their votes being "helpfully" altered by a poll worker, as I witnessed happening with optical scan ballots at a precinct in Massachusetts last November. Nor can electronic votes be temporarily misplaced, as the ballot box was where I was poll watching last October in California.

The ideal voting machine would demonstrate to the voter that his ballot has been included in the final count before he leaves the booth. But even without that assurance, it's important to remember that since Thomas Edison first experimented with an electronic voting device in 1869, each introduction of technology to voting has been challenged by those fearful of its being used to change votes. The best protection has always been human oversight.

Whatever the system - paper, electronic or the antiquated lever machines still in use in New York and parts of other states - a two-person rule is the key to avoiding the alteration or loss of a vote. At least two people must be involved in every step in which the system could be compromised - testing the ballot, distributing the ballots, storing equipment before and after elections, setting up the equipment, handling paper ballots or smart cards, shutting off equipment, and, of course, assembling the tallies.

I have seen poor supervision in many of the hundreds of precincts that I have monitored in the last three years. One election official was writing down the ballot total by herself at the end of an election day in Nevada in September. In Chicago, a lone poll worker accidentally allowed people to insert the incorrect punch cards into voting machines; in Nevada this September, lone election officials accidentally programmed provisional ballots for voters - in both cases depriving voters of voting on local issues. In each of these instances, getting another poll worker to sign that the correct ballot was used, or that the count was done correctly, would lead to a more secure and auditable result.

If a voting machine freezes or otherwise malfunctions on Election Day, poll workers must call troubleshooters immediately. This solved several problems in Reno, where there was a timely and helpful response. Some places have certified "hot machines" in vehicles ready to be deployed wherever problems surface; this should be practiced everywhere.

Absentee voting is more prone to discrepancies than other kinds of voting, but it is hard to get data on it. I watched part of a recount of absentee ballots in Broward County, Fla., in 2002. The ballots were in a warehouse with an open loading dock door, workers were coming and going with no check-in, boxes of ballots were not clearly marked, and the central reader jammed.

The voter cannot control these unfortunate events, which demand better on-site supervision. But he can guard against the three most prevalent ways that non-absentee ballot votes were lost in 2000: registration problems, confusion over ballot design and lost ballots. A voter needs to check his registration and make sure he goes to the right polling place, make sure he has voted for the candidate of his choice, and give himself enough time to vote carefully and alert poll workers if problems occur.

As a result of the confusion in 2000, the Help America Vote Act was put in place to help fund improved voting equipment and training for poll workers and election officials. In November, about 12 percent of the voting machines will be new. With poll workers more aware of potential problems, and numerous organizations formed to monitor the voting, this likely will be the most observed election in U.S. history. If in addition each voter does whatever he can to make sure his vote counts, we can have the most modernized, secure and accurate vote ever recorded.

PHOTO - Ted **Selker**

---- INDEX REFERENCES ----

NEWS SUBJECT: (Government (1GO80); World Elections (1WO93); Global Politics (1GL73); Public Affairs (1PU31))

INDUSTRY: (Computer Peripherals (1CO58); I.T. (1IT96); I.T. in Government (1IT22); Computer Equipment (1CO77); Input Device (1IN11))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Nevada (1NE81); California (1CA98))

Language: EN

OTHER INDEXING: (PHOTO TED) (Roughly; Thomas Edison; Touch) (OPINION)

EDITION: NASSAU AND SUFFOLK

Word Count: 901  
10/9/04 NWSDAY A67  
END OF DOCUMENT

[More Like This](#) | [More Like Selected Text](#)

(C) 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

© 2007 Dialog, a Thomson business.

**NewsRoom**

 Term   Doc 3 of 10 

Tools



[More Like This](#) | [More Like Selected Text](#)

**NewsRoom**

2/26/07 Balt. Sun 9A  
2007 WLNK 3700880

**Baltimore Sun (MD)**  
Copyright 2007 The Baltimore Sun Company

February 26, 2007

Section: Editorial

**DON'T REPLACE VOTING SYSTEM**

Donald F. **Norris** and Paul S. Herrnson

Momentum is developing within the Maryland General Assembly to get rid of the state's perfectly functional touch screen **voting** system and replace it with an optical scan **voting** system that uses paper ballots. This proposed change is not only unnecessary, it would have negative consequences that no one, including proponents of paper ballot/optical scan **voting** systems, will like.

It is fair to say that the touch screen system has performed well. Votes on touch screen **machines** were recorded and reported accurately in the 2004 and 2006 primary and general elections. No results have been challenged based on the performance of these **machines**. Problems in recent elections involved human error and electronic poll books, not the touch screen **voting** system, and the problems were corrected.

Proponents of "opscan" **voting** systems give two principal reasons for replacing touch screen **machines**. First, they assert that computer-based systems are inherently susceptible to fraud and attack. Given the right tools, time, and unfettered access to an electronic **voting** machine, they posit, a knowledgeable person can insert malicious software to produce erroneous results.

It is important to note that this is a hypothetical scenario. The security around the touch screen system in Maryland is designed to prevent such an occurrence, and it can be improved to discover and rectify fraud should an attempt be made.

Second is the dubious claim that voters lack confidence in the touch screen system. Public opinion surveys indicate that Maryland voters like the touch screen system. Surveys conducted last year by the University of Maryland, Baltimore County, The Washington Post and the **Baltimore Sun** all found that voters had high levels of confidence in the touch screen system. Moreover, a study conducted at the University of Maryland, College Park that compared the Maryland system with other **voting** systems found that, in terms of voter trust, overall satisfaction, the need for help, and ability to vote as intended, voters reported that the Maryland system performed better than most others.

Why fix the system if it is not broken? And why fix it if the alternative will present its own range of problems?

Paper is not tamper-proof. Finnish computer programmer Harri Hursti was able to hack into an optical scan system that uses paper ballots. Paper is also notoriously insecure. Opscan systems require local election judges to manage millions of paper ballots on election day, transport them to the local election boards after the election is over, and store them securely. This nation's long and inglorious history of ballot theft suggests that there is plenty of opportunity for mischief.

OpSCAN **voting** systems do not prevent errors. Voters are more likely to select the wrong candidate or commit "undervotes" or "overvotes" when **voting** on paper than when using the state's touch screen system. The evidence further shows that voters who try to change their votes or cast write-in votes also make more errors when using paper. This may be because, unlike touch screen systems, opscan systems have no review screen. And in the event of a controversy, recount discrepancies can occur with the interpretation of paper ballots, as we well know from Florida in 2000 and Washington state in 2004.

At a time when the state faces a budget deficit, we question the wisdom of the General Assembly spending upward of \$40 million to replace a **voting** system that has worked well, that voters like, and in which they have high levels of confidence. Those who are concerned about **voting** security should instead turn their attention to ensuring that the State Board of Elections significantly expands its current program of parallel testing, whereby election officials cast votes and then check the accuracy of the votes recorded on a sufficient number of randomly selected **voting** systems to ensure that no foul play has been committed.

There will be costs associated with expanding parallel testing, but they will be a small fraction of the cost of a replacement system.

Professor Donald F. **Norris** directs the Maryland Institute for Policy Analysis and Research and National Center for the Study of Elections at the University of Maryland, Baltimore County. Professor Paul S. Herrnsen directs the Center for American Politics and Citizenship at the University of Maryland, College Park.

---- INDEX REFERENCES ----

INDUSTRY: (Computer Peripherals (1CO58); I.T. (1IT96); Computer Equipment (1CO77); Input Device (1IN11))

REGION: (Maryland (1MA47); USA (1US73); Americas (1AM92); North America (1NO39))

Language: EN

OTHER INDEXING: (AMERICAN POLITICS; **BALTIMORE SUN**; GENERAL ASSEMBLY; MARYLAND; MARYLAND GENERAL ASSEMBLY; MARYLAND INSTITUTE FOR POLICY ANALYSIS; NATIONAL CENTER; STATE BOARD; UNIVERSITY OF MARYLAND) (Donald F. Norris; Harri Hursti; Momentum; Paul S. Herrnsen)

KEYWORDS: OP-ED COMMENTARY

EDITION: Final

Word Count: 873  
2/26/07 BALTSUN 9A  
END OF DOCUMENT

[More Like This](#) | [More Like Selected Text](#)

(C) 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

© 2007 Dialog, a Thomson business.

**NewsRoom**



proves every vote was counted properly

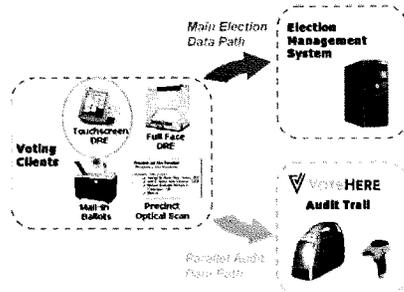
HOME  
CONTACT US

SOLUTIONS TECHNOLOGY CUSTOMERS PARTNERS RESOURCES ABOUT



SOLUTIONS >> AUDIT TRAIL FOR DREs

### VoteHere DRE Audit Trail



#### MORE INFORMATION

Independent, end-to-end audit

Audit vs. Recount

Private Voter Verification and Independent Audit

Equal Accessibility

VoteHere FAQ

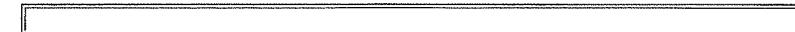
The VoteHere DRE Audit Trail provides independent verification and validation (IV&V) of election results. It monitors elections end-to-end to independently prove the validity of election results. The solution is 100% transparent, protects privacy for all voters equally, backs up all votes cast for disaster recovery, and is easy to integrate and administer.

#### How It Works

**Audit Trail:** Monitors ballot data produced in an election as each vote is cast. This creates a comprehensive, end-to-end audit trail from voting to counted result. The audit trail is separate from the main DRE system and can be used to perform independent validation of the election results to prove the accuracy of the final results.

**Backup:** Collects a backup of all votes for disaster recovery with full voter privacy. Options include electronic or paper backup. All backup options preserve voter privacy, unlike other reel-to-reel VVPAT offerings on the market.

**Verification:** Voters can take home an optional receipt to verify their ballot with full privacy and little to no additional polling place effort. It's optional for all voters, and most will leave the polls site with a basic ballot tracking receipt with zero extra effort. Receipts protect privacy and are equally accessible to all voters.



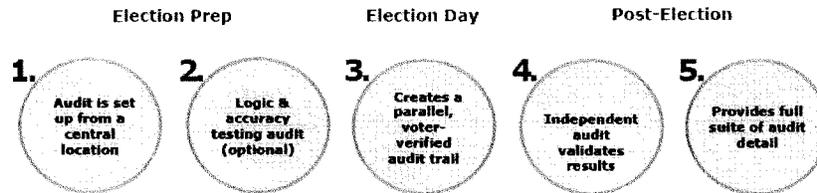
<b>BENEFITS</b>
Proves the accuracy of elections end-to-end through independent audit.
Boosts voter confidence by offering voters the option to check that their vote was counted properly.
Enables disaster recovery by creating a backup of all votes cast.
Audit and voter receipts always protect voter privacy.
Equally accessible to all voters, including sight-impaired.
Easy implementation, simple administration, low ongoing costs, and a full array of reporting and L&A test options.
VHTi source code is transparent and openly published for review.

**System Integration & Implementation**

Integration effort is generally low. Sentinel, an external hardware device that works with any DRE or optical scan system, can be plugged into each DRE with minimal integration work. All processing, audit trail storage, and backup ballot storage is handled inside Sentinel. VHTi software can also be directly integrated into many newer DRE systems, requiring no new hardware.

**Administrative and Audit Details**

The DRE Audit Trail adds minimal new demands to a jurisdiction already using an electronic voting system. Before and after the election, election authorities perform a few steps from a central location to set up the audit. These steps are performed in a highly automated fashion using VHTi Management Tools™, which work alongside the existing election management system (EMS). Verification is easy and optional for all voters.



1. The audit is set up from a central location before the election. This requires election authorities to perform a few tasks on a computer with help from the VoteHere Management Tools. At the pollsite, Sentinel devices just plug into each DRE. No further setup tasks are required.
2. VoteHere can also help audit pre-election L&A testing if desired, but this is optional.
3. During the election, the VoteHere solution is self-sustaining at the polling place. the VoteHere solution creates its own audit data separate from the DRE ballot data, so it doesn't interfere with the main election process. For voters, verification is optional and is as easy to complete as an ATM transaction.

4. After the election, the same few election officials gather to perform a few tasks to prepare the audit. Again, just a few steps are required with help from VoteHere Management Tools. VoteHere solutions have the lowest ongoing operating costs by eliminating the need to transport, guard, count, and recount paper ballots and contemporaneous paper replicas.
5. Independent auditors take the audit data (called the Election Transcript™) and, using their own audit tools, check the validity of the election. This gives independent validation of whole election results, and assures the public that all ballots were counted properly. After the independent audit, voters with receipts can verify those receipts against the independently audited election results. Voters will have confidence that what they see upon verification really means that their vote was counted properly because someone has already audited the election independently.

### Voter Participation

Verification is optional for all voters. Voters not wishing to verify will vote as normal and are given a basic receipt with zero additional effort. For voters who choose the option to verify specific contests, the VHTi voting process is simple and similar to an ATM transaction.

After voting, each voter can choose a basic receipt or a detailed receipt. The basic receipt is the default choice and gives the voter a receipt that can be used to verify that their whole ballot was handled properly end-to-end, but does not include the ability to verify votes for individual contests. The detailed receipt includes verification of the voter's choices in any contests the voter chooses to verify.

### VoteHere Products Used

- Sentinel by VoteHere
- VoteHere Management Tools

[Home](#) | [Privacy Policy](#) | [Terms & Conditions](#) | [Contact Us](#)  
© VOTEHERE 2007 - All rights reserved



## Equal Accessibility to Voter Verification

VoteHere offers independent validation and verification solutions that work alongside any electronic voting system. VoteHere solutions give independent proof of election validity to boost voter confidence. VoteHere solutions monitor elections in real-time, enable independent end-to-end audit, and offer voters two optional levels of private verification - all without paper ballots.

In all implementations, VoteHere leverages DRE equal accessibility features, using the DRE's audio equipment and voting process. No assistance is ever required in the voting booth, and the VoteHere receipt and verification process maintain voter privacy throughout. Any post-voting assistance required by a disabled voter never compromises their secret ballot.

Sentinel, which is powered by VoteHere's patent-pending VHTi technology, is a plug-in hardware device that also provides equal accessibility for all voters. Sentinel includes a feature allowing sight-impaired voters to verify their vote using the same receipt offered to all voters. Sentinel utilizes a simple tactile process to help sight-impaired voters keep track of the order of events between the voting machine and the receipt. Here's how it works:

### Two levels of verification

For 100% of voters, VoteHere offers the same two levels of vote verification:

- A "basic receipt" which requires zero additional effort from the voter in the polling place, but allows verification that the ballot was counted in the election results.
- An optional "detailed receipt" which the voter builds like an ATM receipt, and allows verification that particular vote choices were properly recorded and counted.

### Sight-impaired receipt verification steps

1. Vote using the same DRE process as normal.
2. Confirm ballot when prompted.
3. Choose receipt type and follow the audio instructions if additional verification steps are required.
4. Cast ballot when prompted.
5. Take the receipt out of the polling place.
6. An assistant or text reader reads the ballot seal and codes so that you can compare the codes via a county or state website or by telephone.

As with all VoteHere receipts, no one can determine your vote choices from the receipt, so ballot secrecy is maintained.